

S. B. No.

636

BY

Daggett - Palmer

A BILL TO BE ENTITLED  
AN ACT

amending the Texas Mobile Homes Standards Act, Chapter 656, Acts of the 61st Legislature, Regular Session, 1969, as last amended by Chapter 139, Acts of the 65th Legislature, Regular Session, 1977 (Article 5221f, Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The Texas Mobile Homes Standards Act, Chapter 656, Acts of the 61st Legislature, Regular Session, 1969, as last amended by Chapter 139, Acts of the 65th Legislature, Regular Session, 1977 (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. Short title. This Act may be cited as the Texas (~~Mobile Homes~~) Manufactured Housing Standards Act.

"Section 2. Purpose. ~~It is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that mobile homes have become a primary housing resource of many of the citizens of the state; that a growing awareness exists that many consumers are injured by unprincipled and dishonest members of the mobile home industry; that current warranties are deficient; that existing means of remedying these injustices are inadequate and do not provide a viable means for protecting the consumer; and that it is the responsibility of the state to provide for the protection of its citizens through the imposition of certain regulations on the mobile home industry.~~ The legislature finds that there is a growing need to provide the citizens of this state with safe, affordable, well constructed housing; and the legislature finds that manufactured housing has become a primary housing source of many of the citizens of this state. It is the specific intent of the legislature to encourage the construction of housing for the citizens of this state and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in this state with regard to manufactured housing and that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing to impose certain regulations on the construction, transportation and location of manufactured housing. In recognition of these findings, the legislature deems it necessary to expand various regulatory

powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

"Section 3. Definitions. Whenever used in this Act, unless the context requires otherwise, the following words and terms have the following meanings:

"(a) 'Mobile home' means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(b) ~~'Dealer' means any person other than a manufacturer engaged in the business of buying for resale, selling, or exchanging mobile homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange, or lease-purchase of three or more mobile homes to consumers in any consecutive 12-month period.~~

"(b) 'Modular home' means a structure, manufactured at a location other than the home-site, transportable in one or more sections on a temporary chassis or other conveyance device, designed to be used as a permanent dwelling when installed and placed upon a permanent foundation system and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; this term shall include all types of manufactured housing defined in this Act other than a mobile home.

(c) ~~'Manufacturer' means any person who manufactures or assembles mobile homes and sells them to dealers or consumers.~~

"(c) 'Manufactured housing' or 'manufactured home' means any structure, transportable in one or more sections, which is manufactured at a location other than the home-site and which is designed to be a single or multi-family residence when transported to the home-site and installed on its foundation system and when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. Such terms shall include those structures defined in this Act as mobile homes and modular homes, or either, and shall not include any other structures.

"(d) 'Department' means the Texas Department of Labor and Standards.

"(e) 'Person' means an individual, partnership, company, corporation, association, or other group, however organized.

"(f) 'Broker' means a person engaged by others to negotiate bargains or contracts for the sale, exchange, or lease-purchase of (~~mobile-homes~~) manufactured homes to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in the sale, exchange, or lease-purchase of (~~three~~) two or more (~~mobile-homes~~) manufactured homes to consumers in any consecutive 12-month period.

"(g) 'Consumer' means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home from a manufacturer, retailer, or broker.

~~"(h) -- 'Salesperson' means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase mobile-homes to consumers as an employee or agent of a dealer.~~

"(h) 'Decal' means a device or insignia issued by the department to be permanently affixed to each transportable section of each modular home to indicate compliance with the standards, rules and regulations established by the department.

"(i) 'Seal' means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

"(j) 'Label' means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each mobile home manufactured after June 15, 1976, for sale to a consumer.

~~"(k) -- 'Installation' when used in reference to a mobile home and when required by this Act, means supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.~~

"(k) 'Installation', when used in reference to manufactured housing in this Act, means the transporting of a manufactured home to the home-site, whether initial or secondary, the construction of the foundation system, whether temporary or permanent, and the siting, locating or

and the siting or locating of a manufactured home on such foundation system, and shall include the supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.

"(l) -- 'Installer' means any person, including a mobile home dealer or manufacturer, who performs installation functions on mobile homes.

"(1) 'Installer' means any person, including a retailer or manufacturer, who performs any installation functions on manufactured housing.

"(m) 'Alteration' means the replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a (dealer) retailer, but prior to sale by a (dealer) retailer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the (mobile) manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the (mobile) manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

"(n) 'Lease-purchase' means to enter into a lease contract with a provision conferring on the lessee an option to purchase the (mobile) manufactured home.

"(o) 'Commissioner' means the Commissioner of the Texas Department of Labor and Standards.

"(p) 'Code' means the Texas (Mobile-Homes) Manufactured Housing Standards Code.

"(q) 'Retailer' means any person engaged in the business of buying for resale, selling, or exchanging manufactured housing or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase, or offer therefor, of two or more manufactured homes to consumers in any consecutive 12-month period.

"(r) 'Dealer' means a retailer as defined in this Act.

"(s) 'Manufacturer' means any person who builds, constructs or assembles manufactured housing for sale, exchange or lease-purchase within this state.



"(t) 'Salesperson' means any person who for any form of compensation sells, exchanges or lease-purchases or offers to sell, exchange or lease-purchase manufactured homes to consumers as an employee or agent of a retailer.

"(u) 'Home-site' means that location where a manufactured home is to be installed on its foundation system and used as a residence by a consumer.

"Section 4. Mobile-Homes-Standards Manufactured Housing Standards

(a) The-department-may-adopt-standards-and-requirements-for-the installation-of-plumbing;-heating;-and-electrical-systems-and-for-the construction-of-mobile-homes-as-it-determines-are-reasonably-necessary-in order-to-protect-the-health-and-safety-of-the-occupants-and-the-public.

(1) Said-standards-and-requirements-shall-be-reasonably-consistent with-the-fundamental-principles-adopted-or-issued-as-ANSI-Standard-A119.1 and-as-amended-from-time-to-time-by-the-American-National-Standards-Institute-(ANSI)-applicable-to-mobile-homes.

(2) It-is-unlawful-for-any-person-to-sell-or-offer-for-sale-within this-state-any-mobile-home-that-does-not-meet-the-standards-and-requirements adopted-by-the-department-pursuant-to-this-Act.

(3) The-existing-standards-for-the-plumbing;-heating;-and-electrical systems-and-construction-of-mobile-homes-shall-remain-in-full-force-and effect-upon-the-effective-date-of-this-Act;-and-until-amended-in-accordance with-the-procedure-set-forth-in-this-section.

"(a) The department shall adopt standards and requirements for the construction of manufactured housing, including the plumbing, heating, air-conditioning and electrical systems, as it determines are reasonably necessary in order to protect the health, safety and welfare of the occupants and of the public generally.

"(1) The existing requirements and standards for the plumbing, heating, air-conditioning and electrical systems and construction of mobile homes shall remain in full force and effect upon the effective date of this Act, and until amended in accordance with the procedure set forth in this section.

"(2) The standards and requirements for mobile homes as promulgated by the department in the Texas Manufactured Housing Standards Code shall be in compliance with the federal standards and requirements established

under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.

"(3) The standards and requirements adopted and promulgated by the department for the construction of manufactured housing, including the plumbing, heating, air-conditioning and electrical systems, and for the installation of manufactured housing shall be known as the Texas Manufactured Housing Standards Code.

~~(b)--The department may adopt such minimum standards as it deems necessary for the installation of mobile homes except those in the inventories of manufacturers and dealers within this state so that such mobile homes shall withstand winds of minimum hurricane force velocity within the first two tiers of coastal counties within this state and which shall withstand winds of minimum gale force velocity in all other counties. Compliance with such installation standards shall be the responsibility of the dealer or manufacturer (when the manufacturer sells mobile homes directly to consumers).~~

"(b) The department shall adopt standards and requirements as it shall deem necessary for the protection of the health, safety and welfare of all the citizens of this state for the installation of all manufactured housing in this state. Such standards shall assure that manufactured housing shall withstand winds of minimum hurricane force velocity within the first two tiers of coastal counties within this state and shall withstand winds of minimum gale force velocity in all other counties. Compliance with such installation standards and requirements shall be the responsibility of the installer.

~~(1)--Counties and municipalities may, with the approval of the department, adopt more stringent standards when necessary for the public health and safety.~~

"(1) The existing requirements and standards for the installation of mobile homes as promulgated by the department shall remain in full force and effect upon the effective date of this Act, and until amended in accordance with the procedure set forth in this section.

~~(2)--No mobile home purchased or lease-purchased after the effective date of this Act shall be situated or located within 300 feet of any other mobile home, residence, or building, except those in the inventories of~~

~~manufacturers-and-dealers-within-this-state,-unless-such-mobile-home-is installed-in-accordance-with-such-minimum-standards.~~

"(2) From and after the effective date of the standards adopted for the installation of modular homes, all modular homes shall be installed in compliance with the standards and the rules and regulations of the department.

"(3) The department may cooperate with all units of local government within this state and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of ~~(mobile-homes)~~ manufactured housing pursuant to contracts or other official designations~~(-)~~, and the rules and regulations of the department.

(c) At least 30 days before the adoption or promulgation of any change in or addition to the standards authorized in this section, or for the approval of more stringent standards by any county or municipality, the department shall publish in the Texas Register a notice including:

(1) a copy of the proposed changes and additions; and

(2) the time and place that the department will consider any objections to the proposed changes and additions.

~~(d) After-giving-the-notice-required-by-Subsection-(c)-of-this-section, the-department-shall-afford-interested-persons-an-opportunity-to-participate in-the-standards-adoption-process-through-submission-of-written-data,-views, or-arguments-with-or-without-opportunity-to-present-the-same-orally-on any-matter.~~

"(d) At least thirty days before the adoption or promulgation of any standards or requirements authorized by this section, or any change in or in addition to such standards and requirements, or for the approval of more stringent standards by any political subdivision, the department shall publish in the Texas Register a notice including:

"(1) A copy of the proposed standards and requirements or the changes and additions thereto; and

"(2) The time and place that the department will consider any objections to the proposed standards and requirements, or the changes and additions thereto.

~~(e) The adoption of requirements and standards shall require the approval of and certification by the commissioner.~~

"(e) After giving the notice required by subsection (d) of this section, the department shall afford interested persons an opportunity to participate in the standards and requirements adoption process through submission of written data, views, or arguments with an opportunity to present the same orally at a hearing.

"(f) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.

~~(g) -- Immediately after their promulgation, the department shall publish in the Texas Register all requirements and standards or amendments thereto.~~

~~(h) -- The standards and requirements adopted or promulgated by the department for the installation of plumbing, heating and electrical systems in mobile homes, and for the installation of mobile homes shall be known as the Texas Mobile Homes Standards Code.~~

~~Section 5. -- Compliance with federal standards. -- The Texas Mobile Homes Standards Code shall be in compliance with the federal standards established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974. -- In case of a conflict between such federal standards and the fundamental principles adopted or issued as ANSI Standard A119.1 and as amended from time to time by the American National Standards Institute (ANSI) applicable to mobile homes, the federal standards shall be applicable and given full force and effect.~~

Section 5. Prohibitions.

"(a) It is unlawful for any manufacturer to construct or build mobile homes in this state for sale or resale unless such manufacturer has supplied the department with proof of acceptance by a design approval primary inspection agency authorized by the Department of Housing and Urban Development. has purchased the required labels, and has all mobile homes manufactured in

this state inspected by an accepted in-plant inspection agency authorized by the Department of Housing and Urban Development. It is unlawful for any manufacturer to ship mobile homes into this state for sale or resale unless such manufacturer has complied with all requirements of the National Mobile Home Construction and Safety Standards Act and all standards, rules and regulations of the Department of Housing and Urban Development.

"(b) It is unlawful for any manufacturer to build or construct modular homes in this state or to ship modular homes into this state for sale or resale unless such manufacturer has received approval by the department of the design and specifications for the construction of its modular homes and of its quality control program to assure compliance with the requirements and standards of the Texas Manufactured Housing Standards Code, has purchased the required decals, and has such modular homes inspected pursuant to the regulations of the department.

"(c) It is unlawful for any retailer, broker or installer to make or perform any alteration on a manufactured home to which a seal, label or decal has been affixed prior to the sale to a consumer and the installation of the manufactured home at the home-site unless prior written approval has been obtained from the department.

"(d) It is unlawful for any retailer or broker to sell, exchange, or lease-purchase any manufactured home to any person in this state for use as a residence or dwelling unless such manufactured home has affixed thereto the appropriate seal, label or decal.

"(e) It is unlawful for any manufacturer to sell, exchange, or lease-purchase, or offer to sell, exchange, or lease-purchase any manufactured home to any person in this state other than duly licensed retailer.

"(f) It is unlawful for any person to install, or perform any installation functions on manufactured housing in this state unless such person is a duly licensed installer.

"(g) It is unlawful for any person to sell, exchange, or lease-purchase any manufactured home to another person in this state for use as a dwelling or residence unless such manufactured home is habitable.

"(h) It is unlawful for any person in this state to act as, or engage in the business of a manufacturer, retailer, broker or installer of manufactured housing unless such person has complied with all of the requirements of this Act, and all applicable rules and regulations of the department.

Section-6.--Regulations:--(a)--It-is-unlawful-for-any-manufacturer-to manufacture-mobile-homes-in-this-state-unless-such-manufacturer-has-supplied the-department-with-proof-of-acceptance-by-a-Design-Approval-Primary-Inspection-Agency-authorized-by-the-Department-of-Housing-and-Urban-Development,

has-purchased-the-required-labels,-and-has-all-mobile-homes-manufactured-in  
in-this-state-inspected-by-an-accepted-in-Plant-Inspection-Agency-authorized  
by-the-Department-of-Housing-and-Urban-Development.

(b)--No-alteration-shall-be-made-on-any-mobile-home-to-which-a-label  
has-been-affixed-prior-to-installation-without-the-prior-written-approval  
of-the-department-or-which-is-not-in-compliance-with-the-rules-and-regula-  
tions-of-the-department.

(c)--Each-manufacturer-and-dealer-of-mobile-homes-shall-establish-and  
maintain-such-records;-make-such-reports;-and-provide-such-information-as  
the-commissioner-may-reasonably-require-to-enable-him-to-determine-whether  
such-manufacturer-or-dealer-has-acted-or-is-acting-in-compliance-with-this  
Act;-and-shall;-upon-request-of-a-person-duly-designated-by-the-commissioner,  
permit-such-person-to-inspect-appropriate-books;-papers;-records;-and-docu-  
ments-relevant-to-determining-whether-such-manufacturer-or-dealer-has-acted  
or-is-acting-in-compliance-with-this-Act.

(d)--It-is-unlawful-for-any-manufacturer-to-sell-any-mobile-home-to-a  
dealer-in-this-state-if-said-dealer-has-not-complied-with-the-bonding-or  
security-requirements-of-this-Act.

"Section 6. Licensing requirements. "(a) No manufacturer shall build,  
construct or assemble any manufactured home in this state, nor ship into this  
state any manufactured home, unless such person shall be duly licensed as a  
manufactured housing manufacturer by the department and shall possess a  
current license which has not been revoked.

"(b) No retailer nor broker, as such terms are defined in this Act,  
shall sell, exchange, lease-purchase, or offer to sell, exchange, or lease-  
purchase any manufactured home in this state unless such person shall be  
duly licensed by the department as a manufactured housing retailer or  
manufactured housing broker and shall possess a current license which has  
not been revoked.

"(c) No person shall act as an installer of, nor perform any installa-  
tion functions with reference to manufactured housing in this state, unless  
such person shall be duly licensed as a manufactured housing installer by  
the department and shall possess a current license which has not been  
revoked.

"(d) Each applicant for a license as a manufacturer, retailer, broker,  
or installer shall complete an application form and shall furnish to the

department all information reasonably necessary to determine the applicant's qualifications for a license.

"(e) Each applicant for a license as a retailer, broker, or installer must satisfactorily complete and pass a written examination to be prepared and given by the department as a prerequisite for the issuance of a license, except as expressly provided in subsection (f) of this section. The examination shall consist of appropriate questions and matters dealing with the responsibilities of such person to act as a retailer, broker or installer pursuant to the laws and regulations of the federal government and of this state. The examination shall be given at such times and places as determined to be appropriate by the commissioner.

"(1) The individual sole proprietor shall satisfactorily pass and complete the examination for the licensing of a sole proprietorship.

"(2) If the applicant is a partnership, the managing partner or the partner in charge of the day to day operations of the business shall satisfactorily pass and complete the examination.

"(3) If the applicant is a corporation, the president thereof, or other officer of the corporation as may be officially designated by the Board of Directors as the chief operating officer, shall satisfactorily pass and complete the examination.

"(4) If the individual, partner or officer who has satisfactorily completed and passed the examination leaves the employ of the licensee, the license shall be suspended, without hearing, and shall be reinstated on the date when another person, pursuant to the provisions of this subsection (e), shall have satisfactorily passed and completed the examination.

"(5) In order to assure the continuation of a licensed business entity, more than one person may complete and pass the examination.

"(f) On the effective date of this Act all dealers and manufacturers which have a current bond, cash equivalent or other authorized security in lieu of a bond on file with the department shall be deemed to be licensed as a retailer or manufacturer, respectively and, on completion of an application and payment of the required fee, shall be issued an annual license by the department. In addition all such dealers shall be deemed to be licensed as a manufactured housing installer and, on completion of an application and payment of the required fee, shall be issued an annual installers license by the department. No annual license issued pursuant to this subsection (f) shall be renewed, however, until the retailer or installer shall

have satisfactorily completed and passed the appropriate written examination as required of other licensees.

"(g) All individuals who are regular employees of the licensee shall be covered by the license and shall not be required to be licensed; however, independent contractors or business entities may not operate under the license of a separate business entity.

"(h) All licenses shall be valid for a term of one year from the date of issue and shall be renewable annually thereafter upon submission of a properly completed, verified application and the payment of the annual license fee.

"(i) The commissioner, may, upon filing of a written complaint alleging a violation or threat of violation of this article or any rule or regulation of the department and after notice of hearing, revoke and cancel, or suspend for a time certain, any license issued pursuant to the provisions of this section. Any such hearing shall be held in accordance with the Administration Procedures and Texas Register Act.

Section-7:--Dealers:--It-is-unlawful-for-any-dealer-to-sell-or-offer-for sale-to-dealers-or-to-the-consumers-of-this-state-any-mobile-home-manufactured-after-the-adoption-or-promulgation-of-the-code-unless-said-mobile home-complies-with-the-code-and-bears-a-label.

"Section 7. Used Mobile Homes. No retailer nor broker shall sell a used mobile home manufactured after December 12, 1969, unless it bears and has affixed thereto an appropriate seal or label. If the used mobile home has no seal or label, the retailer or broker shall apply to the department for a seal; such application shall include an affidavit stating that the used mobile home meets the minimum code requirements or standards which were in effect in this state at the time such used mobile home was manufactured.

Section-8:--Any-dealer-who-has-acquired-a-used-mobile-home-without-a seal-or-label-shall-apply-to-the-department-for-a-seal:--The-application-for a-seal-shall-include-an-affidavit-stating-that-the-unit-has-been-brought-up to-or-meets-code-requirements-in-effect-at-the-time-the-mobile-home-was manufactured.

"Section 8. Administration and Enforcement.

"(a) The department is hereby charged with the administration and enforcement of this Act.

"(b) The department shall make and enforce rules and regulations reasonably required to effectuate all provisions of this Act and the notification and correction procedures provided in Section 615 of the National



Mobile Home Construction and Safety Standards Act of 1974.

"(c) The department shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Mobile Home Construction and Safety Standards Act of 1974 and to provide for the effective enforcement of all mobile home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development.

"(d) The department shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act to effectuate and to provide for uniform enforcement of all provisions of this Article and of the Texas Manufactured Housing Standards Code.

"(d) The department shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code.

"(e) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b) and (c) of this section, the department shall publish in the Texas Register a notice including:

"(1) a copy of the proposed changes and additions; and

"(2) the time and place that the department will consider any objections to the proposed changes and additions.

"(f) After giving the notice required by Subsection (e) of this section, the department shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with an opportunity to present the same orally at a hearing.

"(g) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the department shall state the date it shall take effect.

"(h) Immediately after the promulgation of any rule or regulation, the department shall publish in the Texas Register all rules and regulations or amendments thereto.

"(i) Each licensee shall establish and maintain such records, make such reports, pay required fees and provide such information as the department may reasonably require in order to enable it to determine whether such licensee is acting and has acted in compliance with this Act. In addition, each licensee shall, upon the request of a person duly designated by the department, permit such person to inspect appropriate books, papers, records, and documents relevant to a determination as to whether a licensee is acting

and has acted in compliance with this Act.

"(j) The department, through its duly designated representatives, is authorized to enter at reasonable times and without advance notice any manufacturing plant, warehouse, establishment or location of any licensee for the purpose of making such inspections as may be reasonably required to determine whether or not each licensee is in compliance with the provisions of this Act and all rules and regulations duly promulgated by the department.

"(k) The department shall have the authority to, and may at its discretion, contract with any federal agency or other agency or political subdivision of this state, for the performance of any inspections or inspection programs pursuant to the provisions of this Act or the rules and regulations of the department in order to assure that manufactured homes sold or installed in this state comply with all applicable provisions of the Texas Manufactured Housing Standards Code.

"(l) The department may employ such state inspectors as may be deemed necessary in order to carry out the functions required of the department pursuant to the provisions of this Act and to effectuate all provisions of this Act and to enforce all rules and regulations promulgated pursuant hereto. The department is empowered, and may authorize, state inspectors to travel within or without this state for the purpose of inspecting any manufacturing facilities for manufactured housing or for any other purpose in connection with the enforcement of the provisions of this Act.

"(m) The department may enter into contracts with the Department of Housing and Urban Development or its designees for the purpose of nationwide monitoring of Department of Housing and Urban Development programs.

"(n) When necessary or required by law, the department may obtain inspection search warrants.

"(1) A search warrant may be issued to the commissioner or a person duly designated by the commissioner for the purpose of allowing the inspection of any specified premises to determine the presence of a code deviation or defect or other violation of this article.

"(2) A search warrant may not be issued under this article except upon the presentation of evidence of probable cause to believe that evidence of a code deviation or defect or other violation of this article is present in the premises sought to be inspected.

"(3) In determining probable cause, the magistrate is not limited to evidence of specific knowledge, but may consider any of the

following:

"(i) previous deviations, defects or violations found present in the premises;

"(ii) the type of premises;

"(iii) the purpose for which the premises are used; and

"(iv) the presence of code deviations or defects or violations in and the general condition of premises near the premises sought to be inspected.

"(4) The warrant shall be executed in compliance with the requirements of CCP Chapter 18 as presently worded or hereinafter amended.

"(o) Any party adversely affected by a ruling, order, decision, or other act of the department done pursuant to this article may request a public hearing before the commissioner. Such hearing shall be held in accordance with the Administrative Procedure and Texas Register Act.

Section-9:--Adminstration-and-enforcement:--(a)--The-department-is hereby-charged-with-the-administration-and-enforeement-of-this-Act.

(b)--The-department-shall-make-and-enforce-rules-and-regulations reasonably-required-to-effeetuate-all-provisions-of-this-Act-and-the notification-and-correction-procedures-provided-in-Section-615-of-the National-Mobile-Home-Construction-and-Safety-Standards-Act-of-1974;

(c)--The-department-shall-adopt-rules-and-regulations;-promulgate administrative-orders;-and-take-all-actions-necessary-to-comply-with-the provisions-of-the-National-Mobile-Home-Construction-and-Safety-Standards Act-of-1974--and-to-provide-for-the-effective-enforcement-of-all-mobile home-construction-and-safety-standards-in-order-to-have-its-state-plan approved-by-the-secretary-of-the-United-States-Department-of-Housing-and Urban-Development.

(d)--At-least-30-days-before-the-adoption-or-promulgation-of-any-change in-or-addition-to-the-rules-and-regulations-authorized-in-Subsection-(b)-and-(c)-of-this-seetion;-the-department-shall-publish-in-the-Texas-Register-a notice-including:

(1)-a-copy-of-the-proposed-changes-and-additions;-and

(2)-the-time-and-place-that-the-department-will-consider-any objections-to-the-proposed-changes-and-additions.

(e)--After-giving-the-notice-required-by-Subsection-(d)-of-this-seetion, the-department-shall-afford-interested-persons-an-opportunity-to-partieipate

in-the-rule-making-through-submission-of-written-data;-views;-or-arguments with-or-without-opportunity-to-present-the-same-orally-on-any-matter.

{f}--Every-rule-or-regulation-or-modification;-amendment;-or-repeal-of a-rule-or-regulation-adopted-by-the-department-shall-state-the-date-it-shall take-effect.

{g}--Immediately-after-their-promulgation;-the-department-shall-publish in-the-Texas-Register-all-rules-and-regulations-or-amendments-thereto.

{h}-The-department-through-its-authorized-representatives-is-authorized to-enter-at-reasonable-times-and-without-advance-notice-any-factory;-ware-house;-or-establishment-in-which-mobile-homes-are-manufactured;-stored;-or held-for-sale.

{i}--The-department-is-authorized-to-inspect;-at-reasonable-times-and within-reasonable-limits-and-in-a-reasonable-manner;-any-such-factory;-ware-house;-or-establishment;-and-to-inspect-such-books;-papers;-records;-plans, and-documents;-as-may-reasonably-be-required;--Each-such-inspection-shall be-commenced-and-completed-with-reasonable-promptness.

{j}--The-department-may-establish-and-require-such-training-programs in-the-concept;-techniques;-and-inspection-of-mobile-homes-for-the-personnel of-local-governments-as-the-department-considers-necessary.

{k}--The-department-may;-at-its-discretion;-accept-in-plant-inspection service-certifying-that-the-mobile-homes-comply-with-the-code.

"Section 9. Administrative Remedies and Proceedings.

"(a) Any purchaser or consumer who has a complaint against any manufactured housing licensee for an alleged violation of the provisions of this Act, the rules and regulations of the department relating to manufactured housing, or of an alleged violation of any other statute, law, rule or regulation of this state or its agencies, in connection with the sale or lease-purchase of a manufactured home, may file written notice thereof with the commissioner.

"(b) The commissioner may upon his own motion, and shall upon the receipt of a written complaint of any purchaser or consumer, investigate any alleged violations filed pursuant to subsection (a) of this section. The commissioner shall, within a reasonable time following such investigation, issue his letter opinion as to the validity of the complaint and, if deemed valid, his instructions to the appropriate licensees for remedial action. If the purchaser, consumer or any licensee shall disagree with the

opinion or instructions of the commissioner, such party may request a public hearing within twenty (20) days of receipt of such opinion. The commissioner shall designate a hearing officer and shall set a hearing following at least twenty (20) days notice to the complaintant and any licensee which might be affected.

"(c) Hearings shall be held and conducted in accordance with the provisions of the Administrative Procedures and Texas Register Act.

Section 10. -- Employment of state inspectors; -- (a) -- the department may employ state inspectors as the department deems necessary to carry out the functions of this Act.

(b) -- To carry out the provisions of this Act, the department may authorize the state inspectors to travel within or without the state for the purpose of inspecting the manufacturing facilities for mobile homes or for any other purpose in connection with this Act.

"Section 10. Fees

"(a) There shall be a fee of \$25 for the inspection of the installation of mobile homes which shall be paid by the installer of the mobile home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the mobile home. The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

"(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 and to the Act itself, the commissioner shall set fees for the following functions:

"(1) There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

"(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

"(3) The fees in subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval

Primary Inspection Agency or the In-Plant Inspection Agency.

"(4) There shall be a fee for inspection of used mobile homes at retailer locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the retailer in possession of the mobile homes at the time the inspection was made. For any given mobile home at a sales location, this fee may not be assessed more than one time.

"(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the person making the alteration. Such person shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection.

"(6) There shall be a fee for the issuance of seals for used mobile homes which shall be paid by the retailer.

"(c) There shall be a fee of \$25.00 for the inspection of the installation of all modular homes which shall be paid by the installer of the modular home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the modular home. The department shall make the distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

"(d) Following a hearing pursuant to the provisions of the Administrative Procedures and Texas Register Act, the commissioner shall set fees for the following functions:

"(1) A fee for the review of modular home designs, blueprints and specifications; this fee shall be paid by the modular home manufacturer seeking approval.

"(2) An inspection fee for all modular homes manufactured within the State of Texas and for all modular homes manufactured without this state to be transported to retailers or consumers within this state which shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives or inspectors of the department to and from the manufacturing facility.

"(3) A fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, air-conditioning or electrical systems of modular homes. This fee shall be paid by the person making the alteration. Such person shall also be charged for the actual

cost of travel for representatives of the department to and from the place of inspection.

"(4) Annual fees for the issuance of manufacturers, retailers, brokers, and installers licenses.

"(5) A fee for the issuance of decals which shall be paid by the modular home manufacturer.

"(e) All fees assessed under this Act shall be paid to the State Treasury and placed in a special account for the use of the department for the administration and enforcement of this Act.

"(f) The existing fees charged by the department shall remain in effect upon the effective date of this Act and until the new schedule of fees as set forth in this section has been promulgated and adopted.

Section 11:--Fees:--(a)--There shall be a fee of \$15 for the inspection of the installation of mobile homes which shall be paid by the dealer or manufacturer who sold the mobile home to the consumer:--Said fee shall be paid to the state:--This fee shall be paid within 30 days and shall accompany notification to the department of the exact location of the mobile home:--The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

(b)--Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 and to that Act itself, the commissioner shall set fees for the following functions:

(1)--There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency:--This fee shall be paid by the manufacturer seeking approval.

(2)--There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas:--This fee shall be paid by the manufacturer of the home:--The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3)--The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing

and-Urban-Development;-other-than-the-department;-acts-as-the-Design-Approval  
Primary-Inspection-Agency-or-the-In-Plant-Inspection-Agency.

{4}--There-shall-be-a-fee-for-inspection-of-new-or-used-mobile-homes  
at-dealer-locations-to-check-compliance-with-the-code-and-to-determine-if  
the-mobile-home-has-been-damaged-in-transit;--This-fee-shall-be-paid-by-the  
dealer-in-possession-of-the-mobile-homes-at-the-time-the-inspection-was  
made;--For-any-given-mobile-home-at-a-dealer-location;-this-fee-may-not  
be-assessed-more-than-one-time.

{5}--There-shall-be-a-fee-charged-on-an-hourly-basis-for-inspection  
of-alterations-made-upon-the-structure;-plumbing;-heating;-or-electrical  
systems-of-mobile-homes;--This-fee-shall-be-paid-by-the-dealer-making-the  
alteration;--The-dealer-shall-also-be-charged-for-the-actual-cost-of-travel  
for-representatives-of-the-department-to-and-from-the-dealership-making-the  
alteration.

{6}--There-shall-be-a-fee-for-the-issuance-of-seals-for-used-mobile  
homes-which-shall-be-paid-by-the-dealer.

{c}--Fees-assessed-under-this-Act-shall-be-paid-to-the-State  
Treasury-and-placed-in-the-General-Revenue-Fund-except-as-otherwise-pro-  
vided-in-Subsection-(a)-of-this-section;--In-addition;-the-reimbursements  
for-travel-expenses-provided-in-Parts-(2)-and-(4);-Subsection-(b)-of-this-  
section;-are-hereby-reappropriated-to-the-department-for-use-in-its-mobile  
home-program.

{d}--The-existing-fees-charged-by-the-department-shall-remain-in  
effect-upon-the-effective-date-of-this-Act-and-until-the-new-schedule-of  
fees-set-forth-in-Subsection-(b)-of-this-section-has-been-promulgated-and-  
adopted.

#### "Section 11. Bonds.

"(a) As of the effective date of this Act, and before any license shall  
be issued, manufacturers, retailers, brokers, and installers are required to  
file either a surety bond, a cash deposit, or other security in such form as  
the commissioner may prescribe.

"(b) The bond shall be a surety bond issued by a company authorized  
to do business in this state and shall be in conformity with the Insurance  
Code. The cash deposit or other security shall be in such form as the  
commissioner shall deem appropriate.



"(c) The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who establishes liability against a manufacturer, retailer, broker, or installer for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action for violation of any applicable statute, rule or regulation relating to the sale, exchange, lease-purchase, or installation of a manufactured home. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses. The bond or other security shall be open to successive claims up to the amount of face value or required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

"(d) If a cash deposit or other security is posted, the interest from said deposit or security shall go to the depositor.

"(e) If a surety bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so long as the applicable amount specified in this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of this section. If the deficit is not eliminated within 20 days, the license of the inadequately covered manufacturer, retailer, broker or installer shall be immediately suspended.

"(f) Any manufacturer, retailer, broker or installer who maintains a place of business at one or more locations shall file with the department a separate bond or security for each location. Provided, however, that a manufactured home installed on a permanent foundation system and offered for sale as real estate shall not be considered a business location as to require a bond.

"(g) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A retailer shall be bonded, supply a cash deposit or other security in the amount of \$25,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$25,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$5,000.

"(h) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by

this Act. A cash deposit or other security on file with the department shall remain on file with the department 4 years after the licensee ceases doing business as a manufacturer, retailer, broker or installer or at such time as the department may determine that no claims exist against the cash deposit or security.

Section 12. (No Sec. in present Act.)

"Section 12. Warranties. "(a) After the effective date of this Act, all new manufactured homes sold to consumers in this state shall be covered by a manufactured housing warranty as set forth in this section.

"(1) The manufactured home warranty on new homes shall be given by the manufacturer and shall be set forth in a separate written document; such warranty shall be delivered by the retailer to the purchaser at the time of sale.

"(2) The manufactured housing warranty on new homes shall contain, but not be limited to, the following provisions:

"(i) that the manufactured home complies with the standards and requirements of the Texas Manufactured Housing Code;

"(ii) that the warranty shall be in effect for a period of at least 1 year from the date of sale or of initial installation, whichever shall be later;

"(iii) that the manufactured home and the plumbing, heating, air-conditioning and electrical systems therein are free from defects in materials or workmanship;

"(iv) that the purchaser shall notify either the manufacturer or the retailer, or both, in writing, of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the standards and requirements of the code.

"(v) that the new manufactured home is installed in accordance with all standards, rules, requirements and regulations of the department.

"(vi) that the manufacturer or its authorized retailer, or both, shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the standards and requirements of the code.

"(3) The warranty shall contain the address of the manufacturer and retailer where written notices of defects or failures may be given.

"(4) The manufacturer and retailer shall be jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty, notwithstanding the fact that a different warranty service agreement may exist between such.

"(b) The warranty required in subsection (a) in this section shall be void if the installation of the manufactured home, either initially or in connection with a secondary move during the warranty period, is not done by the selling retailer as a licensed installer or by a licensed installer expressly designated by such retailer or the manufacturer. The consumer shall be given conspicuous written notice of this provision.

"(c) Neither the manufacturer nor retailer shall be required to warrant any appliances placed in any manufactured home, provided that such appliances are warranted in writing by the manufacturer thereof and such written warranty is duly given and passed along to the purchaser by the retailer.

"(d) Every manufacturer shall file with the department a written statement of its plan or program for providing and performing warranty service, including repairs or corrections, which shall include a specific description of the responsibilities, if any, which is required of its authorized retailers for such warranty service. Such plan or program shall describe the payment, and method of payment, of warranty service reimbursement, if any, to its authorized retailers. Every manufacturer shall file with the department a list of its retailers which are authorized to perform warranty service. Failure to file or provide warranty service or pay warranty service reimbursement in accordance with the plan or program as filed, shall constitute, in each instance, a violation of this Act.

"(e) For all installations not covered by the warranty as set forth in subsection (a) of this section, the installer shall give each manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, requirements, rules and regulations of the department.

Section 13:--Security required:--(a)--As of the effective date of this Act, manufacturers, dealers, and salespersons are required to file either a performance bond, a cash deposit, or other security in such form as the commissioner may deem necessary to insure compliance with the intent of this Act.

(b)--If a performance bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by

~~this Act.-- A cash deposit or other security need not be posted annually so long as the applicable amount specified in Subsection (i) of this section remains posted.-- If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of Subsection (i) of this section.-- If the deficit is not eliminated within 20 days, any subsequent contract between a consumer and the inadequately covered dealer, manufacturer, or salesperson is voidable at the option of the consumer.~~

~~(c)-- At the time a consumer enters into a contract, if a manufacturer, dealer, or salesperson has neither posted a cash deposit or other security, nor filed a performance bond, the contract between a consumer and that manufacturer, dealer, or salesperson is voidable at the option of the consumer.~~

~~(d)-- If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.~~

~~(e)-- The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code.-- The cash deposit or other security shall be in such form as the commissioner may deem appropriate to insure compliance with the intent of this Act.~~

~~(f)-- The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who establishes liability against a manufacturer, dealer, or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale or lease purchase of a mobile home.-- A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses.-- The bond or other security shall be open to successive claims up to the amount of face value or required security.-- The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.~~

~~(g)-- A consumer shall inform the manufacturer, dealer or salesperson, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home.-- Whenever the department~~

receives notice of a claim against a bond; the department shall promptly notify the bonding company involved;--At the time of sale or delivery of a mobile home to a consumer; the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

{h}--Any manufacturer or dealer who maintains a place of business at one or more locations shall file with the department a separate bond or security for each location.

{i}--A manufacturer shall be bonded; supply a cash deposit or other security in the amount of \$100,000;--A dealer shall be bonded; supply a cash deposit; or other security in the amount of \$25,000;--A salesperson shall be bonded; supply a cash deposit or other security in the amount of \$2,000.

{j}--The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act;--Any cash deposit or other security on file with the department shall remain on file with the department two years after the manufacturer or dealer ceases the business of manufacturing or selling mobile homes or such time as the department may determine that no claims exist against the cash deposit or security.

{k}--Brokers shall be considered to be dealers;--Brokers shall not be considered to be dealers if they possess a valid real estate broker or salesperson license as required by the Real Estate License Act (Article 6573(a); Vernon's Texas Civil Statutes);--In order for a licensed real estate broker or salesperson to qualify for this exemption he or she may only sell used mobile homes installed on and a part of the sale of real property.

### "Section 13. Judicial Review.

"(a) Any party to a hearing aggrieved by the decision or order of the commissioner may secure judicial review thereof in the following manner:

"(1) The petition must be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the commissioner becomes final.

"(2) The filing of a petition for review shall not itself stay the effect of the decision or order complained of, but the commissioner or the reviewing court may order a stay upon appropriate terms and if a stay is so granted no supersedeas bond shall be required.

"(3) Service of process: the petition for review shall be served on the commissioner and upon all parties of record in any hearing before the commissioner in respect to the matter for which review is sought. After service of such petition upon the commissioner and within the time permitted for filing an answer, or as soon thereafter as the record is made available to the commissioner, the commissioner shall certify to the district court in which such petition is filed the record of the proceedings to which the petition refers. The cost of preparing and certifying such record shall be paid to the commissioner by the petitioner and taxed as part of the cost in the case, to be paid as directed by the court upon final determination of said cause.

"(4) The review of any decision or order of the commissioner shall be tried by the court without a jury in the same manner as civil actions generally, but no evidence shall be admissible which was not ad-  
duced at the hearing.

"(5) The burden of proof shall be on the plaintiff. The review-  
ing court may affirm the action complained of or remand the matter to the  
commissioner for further proceedings or other action as may be prescribed by  
order of the court.

"(6) Appeals from any final judgment may be taken by either party  
in the manner provided for in civil actions generally, but no appeal bond  
shall be required of the commissioner.

~~Section 14. -- Warranties. -- (a) -- After the effective date of this Act, all  
new mobile homes sold by a manufacturer or dealer to consumers shall be  
covered by the mobile home warranty set forth in this Act.~~

~~(b) -- The mobile home warranty provided for in this Act shall apply to  
the manufacturer of the mobile home as well as to the dealer who sells the  
mobile home to the buyer, except as otherwise provided.~~

~~(c) -- The mobile home warranty shall be set forth in a separate written  
document, shall be delivered to the consumer by the dealer at the time the  
contract of sale is signed, and shall contain, but is not limited to, the  
following terms:~~

- ~~(1) that the mobile home complies with the code;~~
- ~~(2) that the warranty shall be in effect for a period of at least  
one year from date of initial set-up;~~
- ~~(3) that the mobile home and all appliances and other equipment in-  
stalled and included therein by the manufacturer or dealer are free from~~

defects-in-materials-or-workmanship;

{4}-that-installation-functions-performed-on-the-mobile-home-are performed-in-compliance-with-this-Act;-and-other-applicable-state-requirements;-provided-that-such-installation-operations-shall-not-be-performed by-any-person-other-than-a-dealer;-manufacturer;-or-their-duty-authorized agents;

{5}-that-the-manufacturer-or-dealer-or-both-shall-take-appropriate corrective-action-within-a-reasonable-period-of-time-in-instances-of-defects in-materials-or-workmanship;-or-failures-to-comply-with-the-code;

{6}-that-the-manufacturer-and-dealer-shall-be-jointly-and-severally liable-to-the-consumer-for-the-fulfillment-of-the-terms-of-the-mobile-home warranty;-except-as-provided-in-Part-{4};-Subsection-(e)-of-this-section, and-that-the-consumer-may-notify-either-one-or-both-of-the-need-for-appropriate-corrective-action-in-instances-of-defects-of-workmanship;-or-failures-to-comply-with-the-code;

{7}-that-the-warranty-contains-the-address-of-the-dealer-and-manufacturer-where-notice-of-defects-may-be-given.

"Section 14. Miscellaneous Provisions.

"(a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

"(b) If a manufacturer, retailer, broker or installer does not possess a current valid license at the time of entering into any contract with a consumer, such contract between the consumer and the non-licensed party is voidable at the option of the consumer.

"(c) Except as set forth in Section 11 or as otherwise expressly provided herein, no provision of this Act shall exclude any other remedy available at law or in equity to a consumer.

"(d) If any provision of this Act or the application thereof to any person or any circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 15.--Monitoring contracts.--The department may enter into contracts with the Department of Housing and Urban Development or its designees for the purpose of nationwide monitoring of Department of Housing and Urban Development programs.

"Section 15. Penalties.

"(a) Any individual, or a director, officer, employee or agent of a corporation, who knowingly and willfully violates this Article, or any

rule or regulation of the department in a manner which threatens the health or safety of any purchaser or consumer shall be fined not more than one thousand dollars or imprisoned not more than one year, or both.

"(b) Any retailer, manufacturer, installer or broker who violates any provision of this Act or the rules and regulations of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

"(c) Whenever it appears that any retailer, manufacturer, installer or broker has violated or is threatening to violate any of the provisions of this Act or of the rules and regulations of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain such person from continuing the violation or threat of violation or for the assessment and recovery of the of the civil penalty or for both.

"(d) Failure by a manufacturer, retailer or installer to comply with the warranty provisions in Section 10 of this Act or the code provisions in Section 4 of this Act is considered a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative with the remedies in this Act.

Section-16:--Judicial-review:--(a)--Any-party-to-a-hearing-aggrieved-by the-decision-or-order-of-the-commissioner-may-secure-judicial-review-thereof in-the-following-manner:

(1)--The-petition-must-be-filed-in-a-district-court-of-Travis County,-Texas,-within-30-days-after-the-decision-or-order-of-the-commissioner becomes-final.

(2)--The-filing-of-a-petition-for-review-shall-not-itself-stay-the affect-of-the-decision-or-order-complained-of,-but-the-commissioner-of-the reviewing-court-may-order-a-stay-upon-appropriate-terms-and-if-a-stay-is-so granted-no-supersedeas-bond-shall-be-required.

(3)--Service-of-process:--the-petition-for-review-shall-be-served on-the-commissioner-and-upon-all-parties-of-record-in-any-hearing-before-the



commissioner-in-respect-to-the-matter-for-which-review-is-sought;--After service-of-such-petition-upon-the-commissioner-and-within-the-time-permitted-for-filing-an-answer;-or-as-soon-thereafter-as-the-record-is-made available-to-the-commissioner;-the-commissioner-shall-certify-to-the district-court-in-which-such-petition-is-filed-the-record-of-the-proceedings-to-which-the-petition-refers;--The-cost-of-preparing-and-certifying such-record-shall-be-paid-to-the-commissioner-by-the-petitioner-and-taxed as-part-of-the-cost-in-the-case;-to-be-paid-as-directed-by-the-court-upon final-determination-of-said-cause.

(4)--The-review-of-any-decision-or-order-of-the-commissioner-shall be-tried-by-the-court-without-a-jury-in-the-same-manner-as-civil-actions generally;-but-no-evidence-shall-be-admissible-which-was-not-adduced-at-the hearing.

(5)--The-burden-of-proof-shall-be-on-the-plaintiff;--The-reviewing court-may-affirm-the-action-complained-of-or-remand-the-matter-to-the commissioner-for-further-proceedings.

(6)--Appeals-from-any-final-judgment-may-be-taken-by-either-party in-the-manner-provided-for-in-civil-actions-generally;-but-no-appeal-bond shall-be-required-of-the-commissioner.

Section 17.--Penalties.--(a)--A-person-who-violates-a-provision-of-this Act-or-any-rule-or-regulation-of-the-department-commits-a-Class-A-misdemeanor.

(b)--Any-dealer;-manufacturer;-or-salesperson-who-violates-any-provision-of-this-Act-or-the-rules-and-regulations-of-the-department-may-be-assessed-a-civil-penalty-to-be-paid-to-the-State-of-Texas-in-an-amount-not-to exceed-\$1,000-for-each-such-violation-as-the-court-may-deem-proper;-except that-the-maximum-civil-penalty-may-not-exceed-\$1,000,000-for-any-related series-of-violations-occurring-within-one-year-from-the-date-of-the-first violation.

(c)--Whenever-it-appears-that-any-dealer;-manufacturer;-or-salesperson has-violated-or-is-threatening-to-violate-any-of-the-provisions-of-this Act-or-of-the-rules-and-regulations-of-the-department;-either-the-attorney general-or-the-department-may-cause-a-civil-suit-to-be-instituted-either-for injunctive-relief-to-restrain-such-dealer;-manufacturer;-or-salesperson-from continuing-the-violation-or-threat-of-violation-or-for-the-assessment-and recovery-of-the-civil-penalty-or-for-both.

{d}--Failure-by-a-manufacturer-or-dealer-to-comply-with-the-warranty provisions-in-Section-14-of-this-Act-or-the-code-provisions-in-Section-4-of this-Act-is-considered-a-deceptive-trade-practice-in-addition-to-those-practices-delineated-in-Chapter-17;-Subchapter-E;-Business-&-Commerce-Code;--As such;-the-venue-provisions-and-all-remedies-available-in-said-subchapter apply-to-and-are-cumulative-with-the-remedies-in-this-Act.

Section-18;--Miscellaneous-provisions;--(a)--Any-waiver-by-a-consumer of-the-provisions-of-this-Act-is-contrary-to-public-policy-and-is-unenforceable-and-void.

(b)--No-provision-of-this-Act-shall-exclude-any-other-remedy-available at-law-or-equity-to-the-consumer.

(c)--If-any-provision-of-this-Act-or-the-application-thereof-to-any person-or-circumstances-is-held-invalid;-such-invalidity-shall-not-affect other-provisions-or-applications-of-this-Act-which-can-be-given-effect-without-the-invalid-provision-or-application;-and-to-this-end-the-provisions-of this-Act-are-declared-to-be-severable.

By: Doggett, Parker

S.B. No. 636

(In the Senate - Filed February 20, 1979; February 22, 1979, read first time and referred to Committee on Human Resources; April 11, 1979, reported adversely, with favorable Committee Substitute; April 11, 1979, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. NO. 636

By: Doggett

A BILL TO BE ENTITLED

AN ACT

amending and revising the Texas Mobile Home Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), to be known as the Texas Manufactured Housing Standards Act; providing for regulation of the construction, sale, transportation, and installation of manufactured housing and setting forth such regulation; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. SHORT TITLE. This Act may be cited as the Texas ~~Manufactured Housing~~ [Mobile-Homes] Standards Act."

SECTION 2. Section 2, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. PURPOSE. ~~The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the responsibility of the state to provide for the protection of its citizens who desire to purchase housing by imposing certain regulations on the construction and installation, to provide economic stability of manufactured housing manufacturers, retailers, installers, and brokers, and to provide fair and effective consumer remedies [it is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that mobile homes have become a primary housing resource of many of the citizens of the state, that a growing awareness exists that many consumers are injured by unprincipled and dishonest members of the mobile home industry, that current warranties are deficient, that existing means of remedying these injustices are inadequate and do not provide a viable means for protecting the consumer, and that it is the responsibility of the state to provide for the protection of its citizens through the imposition of certain regulations on the mobile home industry].~~ In recognition of these findings, the legislature deems it necessary to expand various regulatory powers to deal with these problems. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes."

SECTION 3. Section 3, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. DEFINITIONS. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

"(a) 'Mobile home' means a structure, transportable in one or more sections, which is eight body feet or more in width and is

32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

"(b) 'Retailer' ~~['Dealer']~~ means any person ~~[other than a manufacturer]~~ engaged in the business of buying for resale, selling, or exchanging manufactured ~~[mobile]~~ homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer ~~[dealer]~~ unless engaged in the sale, exchange, or lease-purchase of two ~~[three]~~ or more manufactured ~~[mobile]~~ homes to consumers in any consecutive 12-month period.

"(c) 'Manufacturer' means any person who constructs ~~[manufactures]~~ or assembles manufactured housing for sale, exchange, or lease-purchase within the state ~~[mobile homes and sells them to dealers or consumers]~~.

"(d) 'Department' means the Texas Department of Labor and Standards.

"(e) 'Person' means an individual, partnership, company, corporation, association, or other group, however organized.

"(f) 'Broker' means a person engaged by others to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of their manufactured ~~[mobile]~~ homes at the site where installed to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange, or lease-purchase of two ~~[three]~~ or more manufactured ~~[mobile]~~ homes to consumers in any consecutive 12-month period.

"(g) 'Consumer' means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured ~~[mobile]~~ home ~~[from a manufacturer, dealer, or broker]~~.

"(h) 'Decal' means a device or insignia issued by the department that is permanently affixed to each transportable section of each modular home to indicate compliance with the standards, rules, and regulations established by the department ~~['Salesperson' means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase mobile homes to consumers as an employee or agent of a dealer]~~.

"(i) 'Seal' means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

"(j) 'Label' means a device or insignia issued by the department to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each mobile home manufactured after June 15, 1976, for sale to a consumer.

"(k) 'Installation,' when used in reference to manufactured housing ~~[a mobile home and when required by this Act]~~, means the transporting of manufactured homes to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement of a manufactured home on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable units and minor adjustments.

"(l) 'Installer' means any person, including a retailer ~~[mobile home dealer]~~ or manufacturer, who performs installation functions on manufactured housing ~~[mobile homes]~~.

"(m) 'Alteration' means the replacement, addition, and modification, or removal of any equipment or its installation after sale by a manufacturer to a retailer ~~[dealer]~~ but prior to sale and installation by a retailer ~~[dealer]~~ to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured ~~[mobile]~~ home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an

electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring 'plug-in' to an electrical receptacle, which appliance was not provided with the manufactured [mobile] home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

"(n) 'Lease-purchase' means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured [mobile] home.

"(o) 'Commissioner' means the Commissioner of the Texas Department of Labor and Standards.

"(p) 'Code' means the Texas Manufactured Housing [Mobile Homes] Standards Code.

"(q) 'Modular home' means a structure or building module that is manufactured at a location other than the location where it is installed and used as a residence by a consumer, transportable in one or more sections on a temporary chassis or other conveyance device, and designed to be used as a permanent dwelling when installed and placed upon a permanent foundation system. The term includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The term does not include a mobile home as defined in this Act.

"(r) 'Salesperson' means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

"(s) 'Manufactured housing' or 'manufactured home' means a mobile home or a modular home or both.

"(t) 'Registrant' means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, or installer."

SECTION 4. Section 4, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 4. MANUFACTURED HOUSING [MOBILE-HOMES] STANDARDS.  
(a) The department shall ~~[may]~~ adopt standards and requirements for the installation ~~[of plumbing, heating, and electrical systems]~~ and for the construction of manufactured housing, that [mobile homes as it determines] are reasonably necessary in order to protect the health, ~~[and]~~ safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

"(1) ~~[Said standards and requirements shall be reasonably consistent with the fundamental principles adopted or issued as ANSI Standard A119.1 and as amended from time to time by the American National Standards Institute (ANSI) applicable to mobile homes.]~~

"~~[(2)] It is unlawful for any person to sell or offer for sale within this state any mobile home that does not meet the standards and requirements adopted by the department pursuant to this Act.~~

"~~[(3)]~~ The requirements and ~~[existing]~~ standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, ~~[shall]~~ remain in full force and effect ~~[upon the effective date of this Act, and]~~ until amended in accordance with the procedure set forth in this section.

"(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.

"(3) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

"(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that

are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of minimum hurricane-force velocity and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity. ~~[The department may adopt such minimum standards as it deems necessary for the installation of mobile homes except those in the inventories of manufacturers and dealers within this state so that such mobile homes shall withstand winds of minimum hurricane-force velocity within the first two tiers of coastal counties within this state and which shall withstand winds of minimum gale-force velocity in all other counties. Compliance with such installation standards shall be the responsibility of the dealer or manufacturer (when the manufacturer sells mobile homes directly to consumers).]~~

"(1) ~~The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section [counties and municipalities may, with the approval of the department, adopt more stringent standards when necessary for the public health and safety].~~

"(2) ~~All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department [No mobile home purchased or lease-purchased after the effective date of this Act shall be situated or located within 300 feet of any other mobile home, residence, or building, except those in the inventories of manufacturers and dealers within this state, unless such mobile home is installed in accordance with such minimum standards].~~

"(3) The department may cooperate with all units of local government within this state in the establishment of inspection training programs and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of manufactured housing ~~[mobile homes]~~ pursuant to contracts or other official designations and the rules and regulations of the department.

"(c) A political subdivision of this state, without the express approval of the department following a hearing on the matter, may not adopt different standards from those promulgated by the department for the construction or installation of manufactured housing within the political subdivision.

"(d) ~~Before [at least 30 days before]~~ the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or ~~[for]~~ the approval of different ~~[more stringent]~~ standards by any political subdivision ~~[county or municipality]~~, the department shall publish ~~[in the Texas Register]~~ a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended ~~[Article 6252-13a, Vernon's Texas Civil Statutes]~~, not sooner than the 30th day following the publication of notice ~~[including:~~

"~~[(1)] a copy of the proposed changes and additions, and~~

"~~[(2)] the time and place that the department will consider any objections to the proposed changes and additions,~~

"~~[(d)] After giving the notice required by Subsection (c) of this section, the department shall afford interested persons an opportunity to participate in the standards adoption process through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter].~~

(e) ~~[The adoption of requirements and standards shall require the approval of and certification by the commissioner.~~

"~~[(f)] Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.~~

"~~[(g)] Immediately after their promulgation, the department shall publish in the Texas Register all requirements and standards or amendments thereto.~~

"~~[(h)] The standards and requirements adopted or promulgated by the department for the installation of plumbing, heating, and electrical systems in mobile homes, for the body and frame design~~

1 ~~and construction of mobile homes, and for the installation of~~  
 2 ~~mobile homes shall be known as the Texas Mobile Homes Standards~~  
 3 ~~Code.]"~~

4 SECTION 5. Section 6, Texas Mobile Homes Standards Act, as  
 5 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 6 to read as follows:

7 "Section 6. REGULATIONS. (a) It is unlawful for any  
 8 manufacturer to construct ~~[manufacture]~~ mobile homes in this state  
 9 for sale or resale unless such manufacturer has supplied the  
 10 department with proof of acceptance by a Design Approval Primary  
 11 Inspection Agency authorized by the Department of Housing and Urban  
 12 Development, has purchased the required labels, and has all mobile  
 13 homes manufactured in this state inspected by an accepted In-Plant  
 14 Inspection Agency authorized by the Department of Housing and Urban  
 15 Development. It is unlawful for a manufacturer to ship mobile  
 16 homes into the state for sale or resale unless the manufacturer has  
 17 complied with all requirements of the National Mobile Home  
 18 Construction and Safety Standards Act of 1974 and all standards,  
 19 rules, and regulations of the Department of Housing and Urban  
 20 Development.

21 "(b) It is unlawful for any manufacturer to construct  
 22 modular homes in the state or to ship modular homes into the state  
 23 for sale or resale unless constructed to the code and unless the  
 24 manufacturer has received approval by the department of the design  
 25 and specifications for the construction of its modular homes and of  
 26 its quality control program to assure compliance with the  
 27 requirements and standards of the Texas Manufactured Housing  
 28 Standards Code, has purchased the required decals, and has the  
 29 modular homes inspected pursuant to the regulations of the  
 30 department ~~[No alteration shall be made on any mobile home to which~~  
 31 ~~a label has been affixed prior to installation without the prior~~  
 32 ~~written approval of the department or which is not in compliance~~  
 33 ~~with the rules and regulations of the department].~~

34 "(c) Before the sale of a manufactured home to a consumer  
 35 and before its installation, it is unlawful for any manufacturer,  
 36 retailer, broker, or installer to make any alteration on a  
 37 manufactured home to which a seal, label, or decal has been affixed  
 38 or cause such an alteration to be made, unless prior written  
 39 approval has been obtained from the department ~~[Each manufacturer~~  
 40 ~~and dealer of mobile homes shall establish and maintain such~~  
 41 ~~records, make such reports, and provide such information as the~~  
 42 ~~commissioner may reasonably require to enable him to determine~~  
 43 ~~whether such manufacturer or dealer has acted or is acting in~~  
 44 ~~compliance with this Act, and shall, upon request of a person duly~~  
 45 ~~designated by the commissioner, permit such person to inspect~~  
 46 ~~appropriate books, papers, records, and documents relevant to~~  
 47 ~~determining whether such manufacturer or dealer has acted or is~~  
 48 ~~acting in compliance with this Act].~~

49 "(d) It is unlawful for any retailer, broker, or salesperson  
 50 to sell, exchange, or lease-purchase or offer to sell, exchange,  
 51 or lease-purchase any manufactured home to a person in the state  
 52 for use as a residence or dwelling, unless the manufactured home  
 53 has affixed to it the appropriate seal, label, or decal  
 54 [manufacturer to sell any mobile home to a dealer in this state if  
 55 said dealer has not complied with the bonding or security  
 56 requirements of this Act].

57 "(e) It is unlawful for a manufacturer to sell, exchange, or  
 58 lease-purchase or offer to sell, exchange, or lease-purchase a  
 59 manufactured home to any person in the state other than a licensed  
 60 retailer.

61 "(f) A person may not sell, exchange, or lease-purchase any  
 62 manufactured home to another person in the state for use as a  
 63 dwelling or residence, unless the manufactured home is habitable."

64 SECTION 6. Section 7, Texas Mobile Homes Standards Act, as  
 65 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 66 to read as follows:

67 "Section 7. REGISTRATION. (a) A person may not construct  
 68 or assemble a manufactured home in the state or ship a manufactured  
 69 home into the state, unless the person is registered as a  
 70 manufactured housing manufacturer by the department and possesses a



1 valid manufacturer's certificate of registration.

2 "(b) A person may not sell, exchange, lease-purchase, or  
 3 offer to sell, exchange, or lease-purchase two or more manufactured  
 4 homes to consumers in the state in any consecutive 12-month period,  
 5 unless the person possesses a valid manufactured housing retailer's  
 6 certificate of registration.

7 "(c) A person may not offer to negotiate or negotiate for  
 8 others a bargain or contract for the sale, exchange, or  
 9 lease-purchase of two or more manufactured homes to consumers in  
 10 the state in any 12-month period, unless the person possesses a  
 11 valid manufactured housing broker's certificate of registration.

12 "(d) A person may not perform any installation functions on  
 13 manufactured housing in the state, unless the person possesses a  
 14 valid installer's certificate of registration.

15 "(e) Each applicant for a certificate of registration as a  
 16 manufacturer, retailer, broker, or installer must file with the  
 17 department an application for registration containing the following  
 18 information:

19 "(1) the legal name, address, and telephone number of the  
 20 applicant;

21 "(2) the trade name by which the applicant does business  
 22 and, if incorporated, the name registered with the secretary of  
 23 state and the address of the business; and

24 "(3) the dates on which the applicant became the owner and  
 25 operator of the business.

26 "(f) Each application for a certificate of registration must  
 27 be accompanied by proof of the security required by this Act and  
 28 payment of the required fee for the issuance of the certificate.

29 "(g) All certificates of registration are valid for one year  
 30 from the date of issue and are renewable annually on payment of the  
 31 annual fee; provided, however, that the initial certificates of  
 32 registration issued to registrants as of September 1, 1979, may be  
 33 issued for periods of less than one year and the annual fee shall  
 34 be prorated proportionally.

35 "(h) The department by rule may adopt a system under which  
 36 the licenses issued under this article expire on various dates  
 37 during the year. For the year in which the expiration date is  
 38 changed, license fees payable on the date of issuance shall be  
 39 prorated on a monthly basis so that each licensee shall pay only  
 40 that portion of the license fee that is applicable to the number of  
 41 months during which the license is valid. On renewal of the  
 42 license on the new expiration date, the total license fee is  
 43 payable.

44 "(i) If a change occurs in the information filed with the  
 45 department under Subsection (e) of this section, the applicant  
 46 shall file an amendment to his or her application that states the  
 47 correct information.

48 "(j) While acting as an agent for a registrant, an employee  
 49 is covered by the business entity's certificate of registration and  
 50 is not required to be individually registered. An independent  
 51 contractor or business entity may not operate under the certificate  
 52 of registration of another business entity.

53 "(k) The commissioner, after notice and hearing, may revoke  
 54 or suspend for a definite period of time and for a particular  
 55 geographic area any certificate of registration issued under this  
 56 Act if the commissioner finds that the registrant:

57 "(1) knowingly and willfully violated any provision of this  
 58 Act or any rule or regulation made pursuant to this Act after  
 59 receipt of actual notice of any failure to comply;

60 "(2) without lawful authorization retained or converted any  
 61 money, property, or any other thing of value from consumers in the  
 62 form of down payments, sales and use taxes, deposits, or insurance  
 63 premiums;

64 "(3) failed to deliver proper title documents or  
 65 certificates of title to consumers;

66 "(4) failed to give or breached any manufactured home  
 67 warranty required by this Act or by the Federal Trade Commission;

68 "(5) engaged in any false, misleading, or deceptive acts or  
 69 practices as the term is set forth in and as those acts are  
 70 declared unlawful by the provisions of Chapter 17, Subchapter E,



1 Business & Commerce Code: or

2 "(6) failed to furnish or file any reports required by the  
3 department for the administration and enforcement of this Act.

4 "(1) The commissioner shall conduct any hearing involving  
5 the revocation or suspension of a certificate of registration in  
6 accordance with the Administrative Procedure and Texas Register  
7 Act, as amended (Article 6252-13a, Vernon's Texas Civil  
8 Statutes). [DEALERS. It is unlawful for any dealer to sell or  
9 offer for sale to dealers or to the consumers of this state any  
10 mobile home manufactured after the adoption or promulgation of the  
11 code unless said mobile home complies with the code and bears a  
12 label.]"

13 SECTION 7. Section 8, Texas Mobile Homes Standards Act, as  
14 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
15 to read as follows:

16 "Section 8. USED MOBILE HOMES. A retailer or broker may not  
17 sell, exchange, or lease-purchase or negotiate for the sale,  
18 exchange, or lease-purchase of a used mobile home manufactured  
19 after December 12, 1969, unless an appropriate seal or label is  
20 affixed to it. If the used mobile home does not have a seal or  
21 label, the retailer or broker must apply to the department for a  
22 seal with an affidavit that the manufactured home is  
23 habitable. [SEAL OF APPROVAL. Any dealer who has acquired a used  
24 mobile home without a seal or label shall apply to the department  
25 for a seal. The application for a seal shall include an affidavit  
26 stating that the unit has been brought up to or meets code  
27 requirements in effect at the time the mobile home was  
28 manufactured.]"

29 SECTION 8. Subsection (b), Section 9, Texas Mobile Homes  
30 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
31 Statutes), is amended to read as follows:

32 "(b) The department shall adopt rules and regulations,  
33 promulgate administrative orders, and take all action necessary to  
34 assure compliance with the intent and purpose of this Act to  
35 effectuate and to provide for uniform enforcement of all provisions  
36 of this Act and of the Texas Manufactured Housing Standards Code.  
37 The department shall make and enforce rules and regulations  
38 reasonably required to effectuate [all provisions of this Act and]  
39 the notification and correction procedures provided in Section 615  
40 of the National Mobile Home Construction and Safety Standards Act  
41 of 1974."

42 SECTION 9. Subsection (h), Section 9, Texas Mobile Homes  
43 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
44 Statutes), is amended to read as follows:

45 "(h) The department through its authorized representatives  
46 is authorized to enter at reasonable times and without advance  
47 notice any factory, warehouse, [or] establishment, or location of a  
48 registrant to make any inspections that are reasonably required to  
49 determine whether a registrant is in compliance with this Act and  
50 the rules, regulations, and administrative orders promulgated under  
51 this Act [in which mobile homes are manufactured, stored, or held  
52 for sale]."

53 SECTION 10. Subsection (j), Section 9, Texas Mobile Homes  
54 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
55 Statutes), is amended to read as follows:

56 "(j) The department may employ state inspectors to carry out  
57 the functions required of the department pursuant to this Act, to  
58 effectuate the provisions of this Act, and to enforce the rules,  
59 regulations, and administrative orders promulgated pursuant to this  
60 Act. The department may authorize state inspectors to travel  
61 inside or outside of the state to inspect manufacturing facilities  
62 in connection with the enforcement of this Act [The department may  
63 establish and require such training programs in the concept,  
64 techniques, and inspection of mobile homes for the personnel of  
65 local governments as the department considers necessary]."

66 SECTION 11. Subsection (k), Section 9, Texas Mobile Homes  
67 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
68 Statutes), is amended to read as follows:

69 "(k) The department may contract with any federal agency or  
70 any agency or political subdivision of any state for the

performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the department to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code [The department may, at its discretion, accept in-plant inspection reports by a recognized body or agency having follow-up in-plant inspection service certifying that the mobile homes comply with the code]."

SECTION 12. Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended by adding Subsections (l) and (m) to read as follows:

"(l) The department may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.

"(m) When necessary or required by law, the department may obtain inspection search warrants."

SECTION 13. Section 11, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 11. FEES. (a) There shall be a fee of \$15 for the inspection of the installation of mobile homes which shall be paid by the installer of the mobile home [dealer or manufacturer who sold the mobile home to the consumer]. Said fee shall be paid to the state[. This fee shall be paid within 30 days] and shall accompany notification to the department of the exact location of the mobile home. The department shall make fee distributions to local governmental subdivisions performing inspections pursuant to contracts or other official designations.

"(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 and to that Act itself, the commissioner shall set fees for the following functions:

"(1) There shall be a schedule of fees for the review of mobile home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

"(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

"(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

"(4) There shall be a fee for inspection of [new or] used mobile homes at retailer [dealer] locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the retailer [dealer] in possession of the mobile homes at the time the inspection was made. For any given mobile home at a retailer [dealer] location, this fee may not be assessed more than one time.

"(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the person [dealer] making the alteration. The person [dealer] shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection [dealership making the alteration].

"(6) There shall be a fee for the issuance of seals for used mobile homes which shall be paid by the retailer or broker [dealer].

"(c) The installer of a modular home shall pay to the state a fee set by the commissioner for the inspection of the installation of the modular home. Before installation the installer shall notify the department of the exact location of the modular home and shall pay the fee [Fees assessed under this Act shall be paid to the State Treasury and placed in the General Revenue Fund except as otherwise provided in Subsection (a) of this

~~section. In addition, the reimbursements for travel expenses provided in Parts (2) and (4), Subsection (b) of this section, are hereby reappropriated to the department for use in its mobile home program].~~

"(d) Following a hearing pursuant to the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), the commissioner shall set fees for the following functions:

"(1) a fee paid by the manufacturer for the review of modular home designs, blueprints, and specifications;

"(2) an inspection fee paid by the manufacturer for all modular homes manufactured in the state and for all modular homes manufactured outside of the state to be transported to retailers or consumers in the state;

"(3) a fee charged on an hourly basis and paid by the person making the alteration for an inspection of the alterations made on a modular home after construction and certification by the manufacturer and before the closing of a sale to the consumer;

"(4) annual fees for the issuance and renewal of manufacturers', retailers', brokers', and installers' certificates of registration; and

"(5) a fee for the issuance of decals that shall be paid by the manufacturer.

"(e) The person required to pay an inspection fee set in accordance with Subsection (d) of this section shall pay the cost of travel to and from the place of the inspection for representatives of the department who make the inspection.

"(f) All fees assessed under this Act shall be paid to the State Treasurer and placed in the General Revenue Fund.

"(g) The [existing] fees charged by the department in effect August 31, 1979, shall remain in effect [upon the effective date of this Act and] until the new schedule of fees set forth in [Subsection (b) of] this section has been promulgated and adopted."

SECTION 14. Section 13, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 13. SECURITY REQUIRED. (a) The department may not issue a certificate of registration, unless the applicant first files [as of the effective date of this Act, manufacturers, dealers, and salespersons are required to file either] a surety [performance] bond, a cash deposit, or other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process [along with such information as the commissioner may deem necessary to insure compliance with the intent of this Act].

"(b) If a surety [performance] bond is filed, it shall be continuous and remain in effect until cancelled by the surety company with notice as provided by this Act. A cash deposit or other security need not be posted annually so long as the applicable amount specified in [Subsection (1) of] this section remains posted. If a claim is made against a cash deposit causing the deposit to be lessened, the depositor has 20 calendar days in which to deposit additional money or other security so that compliance may be had with the requirements of [Subsection (1) of] this section. If the deficit is not eliminated within 20 days, the certificate of registration of the inadequately covered manufacturer, retailer, broker, or installer is immediately suspended. If a bond is cancelled, the certificate of registration is immediately suspended [any subsequent contract between a consumer and the inadequately covered dealer, manufacturer, or salesperson is voidable at the option of the consumer].

"[(c) At the time a consumer enters into a contract, if a manufacturer, dealer, or salesperson has neither posted a cash deposit or other security, nor filed a performance bond, the contract between a consumer and that manufacturer, dealer, or salesperson is voidable at the option of the consumer.]

"[(c) [(d)] If a cash deposit or other security is posted, the interest from said deposit shall go to the depositor.

"[(d) [(e)] The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in

conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate ~~[to insure compliance with the intent of this Act].~~

"(e) ~~[(f)]~~ The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment [establishes liability] against a manufacturer, ~~retailer, broker, installer [dealer]~~ or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, ~~[or] lease-purchase, exchange, brokerage, or installation~~ of a manufactured [mobile] home, including but not limited to

"(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

"(2) failure to deliver proper title documents or certificates of title to consumers;

"(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission; or

"(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the cash deposit or other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of face value of the bond or other required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

"(f) ~~[(g)]~~ A consumer shall inform the manufacturer, ~~retailer, installer, [dealer]~~ or salesperson, and the department of any claim against the bond or security no later than two years after the purchase of the mobile home. Whenever the department receives notice of a claim against a bond, the department shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or delivery of a manufactured [mobile] home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

"(g) ~~[(h)]~~ Any manufacturer, ~~retailer, broker, or installer [or dealer]~~ who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond.

"(h) ~~[(i)]~~ A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A ~~retailer [dealer]~~ shall be bonded, supply a cash deposit, or other security in the amount of \$25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$15,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

"(i) ~~[(j)]~~ The bonding company must provide written

notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ~~[manufacturer or dealer]~~ ceases ~~[the]~~ business as a manufacturer, retailer, broker, or installer or salesperson or at ~~[of manufacturing or selling mobile homes or]~~ such time as the department may determine that no claims exist against the cash deposit or security.

~~"[(k) Brokers shall be considered to be dealers. Brokers shall not be considered to be dealers if they possess a valid real estate broker or salesperson license as required by The Real Estate License Act (Article 6573(a), Vernon's Texas Civil Statutes). In order for a licensed real estate broker or salesperson to qualify for this exemption he or she may only sell used mobile homes installed on and a part of the sale of real property.]"~~

SECTION 15. Section 14, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 14. WARRANTIES. (a) After the effective date of this Act, all new manufactured ~~[mobile]~~ homes sold ~~[by a manufacturer or dealer]~~ to consumers in the state shall be covered by the manufactured ~~[mobile]~~ home warranty set forth in this section ~~[Act]~~.

"(b) The manufactured ~~[mobile]~~ home warranty provided for in this Act is given by ~~[shall apply to]~~ the manufacturer of the manufactured ~~[mobile]~~ home ~~[as well as to the dealer who sells the mobile home to the buyer, except as otherwise provided]~~.

"(c) The manufactured ~~[mobile]~~ home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer ~~[dealer]~~ at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

"(1) that the manufactured ~~[mobile]~~ home complies with the code;

"(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later ~~[set-up]~~;

"(3) that the manufactured ~~[mobile]~~ home and all appliances and other equipment installed and included therein by the manufacturer or retailer ~~[dealer]~~ are free from defects in materials or workmanship;

"(4) that the manufactured home is installed in accordance with all standards, rules, regulations, administrative orders, and requirements of the department ~~[that installation functions performed on the mobile home are performed in compliance with this Act, and other applicable state requirements, provided that such installation operations shall not be performed by any person other than a dealer, manufacturer, or their duly authorized agents]~~;

"(5) that the manufacturer or the retailer ~~[dealer]~~ or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;

"(6) ~~[that the manufacturer and dealer shall be jointly and severally liable to the consumer for the fulfillment of the terms of the mobile home warranty, except as provided in Part (4), Subsection (c) of this section, and that the consumer may notify either one or both of the need for appropriate corrective action in instances of defects of workmanship, or failures to comply with the code]~~

~~"[(7)]~~ that the warranty contains the address of the retailer ~~[dealer]~~ and manufacturer where notices of defects may be given; and

"(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.

"(d) The manufacturer and retailer are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.

"(e) For all installations not covered by the warranty as

1 set forth in Subsection (c) of this section, the installer shall  
 2 give each manufactured home owner a written warranty that the  
 3 installation of the home was done in accordance with all standards,  
 4 requirements, rules, regulations, and administrative orders of the  
 5 department."

6 SECTION 16. Section 17, Texas Mobile Homes Standards Act, as  
 7 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 8 to read as follows:

9 "Section 17. PENALTIES. (a) A person, individual, or  
 10 director, officer, or agent of a corporation who knowingly and  
 11 willfully violates a provision of this Act or any rule, [or]  
 12 regulation, or administrative order of the department in a manner  
 13 that threatens the health or safety of any purchaser or consumer  
 14 commits a misdemeanor and on conviction shall be fined not more  
 15 than \$1,000 or shall be confined in the county jail not longer than  
 16 one year or both [commits a Class A misdemeanor].

17 "(b) Any person [dealer, manufacturer, or salesperson] who  
 18 violates any provision of this Act or the rules and regulations of  
 19 the department may be assessed a civil penalty to be paid to the  
 20 State of Texas in an amount not to exceed \$1,000 for each such  
 21 violation as the court may deem proper, except that the maximum  
 22 civil penalty may not exceed \$1,000,000 for any related series of  
 23 violations occurring within one year from the date of the first  
 24 violation.

25 "(c) Whenever it appears that any person [dealer,  
 26 manufacturer, or salesperson] has violated or is threatening to  
 27 violate any of the provisions of this Act or of the rules, [and]  
 28 regulations, and administrative orders of the department, either  
 29 the attorney general or the department may cause a civil suit to be  
 30 instituted either for injunctive relief to restrain the person  
 31 [such dealer, manufacturer, or salesperson] from continuing the  
 32 violation or threat of violation or for the assessment and recovery  
 33 of the civil penalty or for both.

34 "(d) Failure by a manufacturer or retailer [dealer] to  
 35 comply with the warranty provisions [in Section 14] of this Act or  
 36 any implied warranties or the violation of any provision of this  
 37 Act by any person [the code provisions in Section 4 of this Act] is  
 38 [considered] a deceptive trade practice in addition to those  
 39 practices delineated in Chapter 17, Subchapter E, Business &  
 40 Commerce Code and is actionable pursuant to said subchapter. As  
 41 such, the venue provisions and all remedies available in said  
 42 subchapter apply to and are cumulative of [with] the remedies in  
 43 this Act."

44 SECTION 17. Section 18, Texas Mobile Homes Standards Act, as  
 45 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 46 to read as follows:

47 "Section 18. MISCELLANEOUS PROVISIONS. (a) Any waiver by a  
 48 consumer of the provisions of this Act is contrary to public policy  
 49 and is unenforceable and void.

50 "(b) No provision of this Act shall exclude any other remedy  
 51 available at law or equity to the consumer.

52 "(c) If any provision of this Act or the application thereof  
 53 to any person or circumstances is held invalid, such invalidity  
 54 shall not affect other provisions or applications of this Act which  
 55 can be given effect without the invalid provision or application,  
 56 and to this end the provisions of this Act are declared to be  
 57 severable.

58 "(d) If a retailer, broker, or installer does not possess a  
 59 valid certificate of registration at the time of entering into any  
 60 contract with a consumer, the contract between the consumer and the  
 61 retailer, broker, or installer is voidable at the option of the  
 62 consumer.

63 "(e) Nothing in this Act shall be construed to modify or  
 64 amend any provisions of The Real Estate License Act (Article 6573a,  
 65 Vernon's Texas Civil Statutes).

66 "(f) Notwithstanding any provisions of any other statute,  
 67 regulation, or ordinance to the contrary, an installer is not  
 68 required to secure any permit, certificate, or license or pay any  
 69 fee for the transportation of manufactured housing to the place  
 70 where it is to be installed except as required by the department or



1 the State Department of Highways and Public Transportation. The  
 2 State Department of Highways and Public Transportation shall  
 3 cooperate with the department in the routing of the transportation  
 4 of housing and shall not issue any permits for the transportation  
 5 of manufactured housing except to persons holding valid  
 6 certificates of registration issued by the department."

7 SECTION 18. Chapter 18, Code of Criminal Procedure, 1965, as  
 8 amended, is amended by adding Article 18.051 to read as follows:

9 "Article 18.051. WARRANTS FOR REPRESENTATIVES OF THE TEXAS  
 10 DEPARTMENT OF LABOR AND STANDARDS. (a) A search warrant may be  
 11 issued to a representative of the Texas Department of Labor and  
 12 Standards for the purpose of allowing inspection of any specified  
 13 premises to determine the presence of a violation of the Texas  
 14 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas  
 15 Civil Statutes) or the Texas Manufactured Housing Standards Code.

16 "(b) A magistrate may not issue a search warrant under this  
 17 article unless there is a presentation of evidence of probable  
 18 cause to believe that a violation is present in the premises sought  
 19 to be inspected.

20 "(c) In determining probable cause, the magistrate is not  
 21 limited to evidence of specific knowledge and may consider any of  
 22 the following:

23 "(1) previous deviations, defects, or violations found  
 24 present in the premises;

25 "(2) the type of premises;

26 "(3) the purpose for which the premises are used; and

27 "(4) the presence of code deviations or defects or  
 28 violations in and the general condition of premises near the  
 29 premises sought to be inspected."

30 SECTION 19. Sections 5, 10, and 15, Texas Mobile Homes  
 31 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
 32 Statutes), are repealed.

33 SECTION 20. This Act takes effect September 1, 1979. The  
 34 standards and requirements for the construction and installation of  
 35 modular homes established by this Act are effective January 1,  
 36 1980.

37 SECTION 21. The importance of this legislation and the  
 38 crowded condition of the calendars in both houses create an  
 39 emergency and an imperative public necessity that the  
 40 constitutional rule requiring bills to be read on three several  
 41 days in each house be suspended, and this rule is hereby suspended.

42 \* \* \* \* \*

43 Austin, Texas  
 44 April 11, 1979

45 Hon. William P. Hobby  
 46 President of the Senate

47 Sir:

48 We, your Committee on Human Resources, to which was referred S.B.  
 49 No. 636, have had the same under consideration, and I am instructed  
 50 to report it back to the Senate with the recommendation that it do  
 51 not pass, but that the Committee Substitute adopted in lieu thereof  
 52 do pass and be printed.

53 Brooks, Chairman

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

March 8, 1979

Honorable Chet Brooks, Chairman  
Committee on Human Resources  
Senate Chamber  
Austin, Texas

In Re: Senate Bill No. 636  
By: Doggett, Parker

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 636 (amending the Texas Mobile Homes Standards Act) to be as follows:


The bill would make no appropriation but would constitute prior legislative authorization for an appropriative request.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of a Special Fund</u>	<u>Probable Revenue Gain to Special Fund</u>	<u>Change in Number of State Employees from FY 1979</u>
1980	\$359,433	\$468,084	+19
1981	371,030	468,084	+19
1982	412,048	468,084	+21
1983	412,048	468,084	+21
1984	412,048	468,084	+21

Similar annual costs and revenue gains would continue as long as the provisions of the bill are in effect.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.

  
Thomas M. Keel  
Director



# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

April 11, 1979

Honorable Chet Brooks, Chairman  
Committee on Human Resources  
Senate Chamber  
Austin, Texas

In Re: Committee Substitute for Senate  
Bill No. 636

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Committee Substitute for Senate Bill No. 636 (amending the Texas Mobile Homes Standards Act), to be as follows:

The bill would make no appropriation but would constitute prior legislative authorization for an appropriative request.

The probable fiscal implication of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of the General Revenue Fund</u>	<u>Probable Revenue Gain to the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1979</u>
1980	\$656,863	\$656,863	+30
1981	680,210	680,210	+30
1982	680,210	680,210	+30
1983	680,210	680,210	+30
1984	680,210	680,210	+30

Similar annual costs and revenue gains would continue as long as the provisions of the bill are in effect.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.

  
Thomas M. Keel  
Director

Source: Texas Department of Labor and Standards; LBB; TK; JH; SB; JJ

Chairman : At this time I would like to lay out SB 636 and recognize its author, Senator Doggett.

DOGGETT : Mr. Chairman and members, I think Brad has a committee substitute to distribute. We have had this bill pending for some time because we have been trying to work out . . .

CHAIRMAN : On agreement by Senator Doggett, he sends up a committee substitute. Is there objection? If not -- it is so ordered.

DOGGETT : I believe that we have achieved agreement on the bill from the Department of Labor, the Consumer groups and the manufactured housing industry. And since it hasn't been explained previously, just about a five minute explanation perhaps, from Commissioner Tate and Mr. Will Earle, from the manufactured housing industry. If you will come forward.

EARLE : My name is Will Earle. I am an attorney in Austin and am President and General Counsel of the Texas Manufactured Housing Assn. The bill is a comprehensive re-write of Article 5221 (f), basically bringing into that regulation modular housing along with mobile homes. Mobile homes have been regulated since 1969 in Texas in various degrees, and under a comprehensive regulatory scheme that was passed in 1975. Modulares are a new innovation in the industry. Quite frankly they are built just like mobile homes in a central plant facility, but are simply built on a temporary chassis rather than a permanent chassis.

CHAIRMAN : Mr. Earle, excuse me just a moment. Would you yield for a question from Senator Blake?

BLAKE : If we should pass this bill, cities that have ordinances concerning mobile homes -- would this put the modular homes under those same ordinances? Would it suddenly mean that if somebody were to build a modular home they would have to comply with the same city ordinances or the zoning --the Zoning Commission's . .

EARLE : No, sir. It would not affect the

zoning of cities at all, Senator.

BLAKE : But if you are pairing them together. .  
: We do have to have a state standard

. . . . .

BLAKE : Okay, if we have an ordinance in a city  
that says no mobile homes shall be in a certain section of town,  
that would mean then that you couldn't have a modular home too?

EARLE : No, sir. It would not because the  
definition of modular, if you will notice excludes mobile homes.  
So the two are very separate. It would not affect the city  
ordinance in that way.

BLAKE : What about financing? Mobile homes now  
are financed much like automobiles. Would it change the way  
mobile homes are financed under Cahpter 7 of the Credit Code?  
Modular homes are financed under Chapter 6 of the Credit Code,  
so this would not affect . . .

EARLE : No, sir. It does not affect the  
financing, no sir.

BLAKE : I had some that were concerned about  
that.

EARLE : I understand Senator. I know the  
concern and have discussed the concern with several of your  
constituents. Okay.

Basically the industry has agreed to the bill. We feel  
that overall, and all things considered, would be favorable  
from a standpoint of being able to provide additional low cost  
housing through the free enterprise system to the public. I  
will be glad to answer any questions if there are technical  
questions about the bill.

ANDUJAR : Just a question or two. Mr. Earle,  
are these modular homes manufactured by entirely different  
companies -- it is not a branch of the mobile home industry?

EARLE : No, ma'am. The major manufacturers  
of modular homes today, in Texas, are people who also manufacture  
mobile homes. Now we do have some out of state concerns, in  
Oklahoma, Louisiana, and Arkansas, that are building modular

homes on temporary chassis, shipping them into this state and escaping the regulation.

ANDUJAR : You remember the big flap we had over mobile homes a couple of years ago. And you feel that this bill is fully understood. You are telling us that it is going to be fully understood; you are telling us you feel that it is an agreed bill. Do they really understand? We are not going to have a big hazzle after the bill passes, are we?

EARLE : Senator, I do not believe so. We have covered the bill thoroughly with the manufacturers as well as with the retailers in our Association and we do represent the three major modular manufacturers in Texas today.

BLAKE : Let me ask you another question. You made a statement that these people that are making modular homes outside the state and shipping them in and selling them through salesmen. How does this affect them?

EARLE : It would require that those modular homes constructed outside the state be built to the code to be adopted by the Department of Labor and Standards.

BLAKE : So they may have to change the way they are building homes. .

EARLE : If they are not building them according to the code. The code, of course, would be a minimum code.

BLAKE : What about the homes that they have already brought to Texas?

EARLE : It would not affect those at all, sir.

CHAIRMAN : Thank you, Mr. Earle. We have one other witness registered also in favor of. I don't know if he has anything to add or not. Mr. Jim Boyle with the Texas Consumer Assn.

BOYLE : Mr. Chairman, I am Jim Boyle, Executive Director of the Texas Consumer Assn. and we worked on this bill with the Manufactured Housing Assn., and Senator Doggett, and we endorse the bill as currently written. I will be happy to answer any questions.

CHAIRMAN : Senator Blake.

BLAKE : What is the real reason for the legislation? We have no regulation on the modular homes, is that why?

EARLE : There is no regulation on modular homes.

: So we are trying to put them under the same as the mobile home -- the same plumbing, electrical construction standards that you have in the mobile home industry.

BLAKE : Would this affect the homes that are built to travel -- you know you have some \$40,000 and \$50,000 homes going down the road on a chassis -- does this affect them in any way? The building of them?

EARLE : No

DOGGETT : I think Commissioner Tate is here. Do you have anything to add, Commissioner?

CHAIRMAN : Commissioner Lynn Tate of the Board of Labor and Standards.

TATE : The only comment that I would have to make is that the Department, along with industry and along with the consumer groups, supports this bill. We feel that the bill will be a compliment to both the consumers that are affected, and the industry that will be regulated. I am here to answer any questions that you might have.

CHAIRMAN : Senator Price has one.

PRICE : Senator, and the gentleman testifying here, what standards are they putting in these mobile homes for fire now? Does this address that?

TATE : Yes, it does.

DOGGETT : Do you want to tell us what they do as far fire standards--I guess it is mainly electrical.

TATE : Yes, this would provide protection under the standards that are presently being --that are set forth in regards to mobile homes and that has to do with the inspection of the electrical work that is performed in the plant when the home is produced.

PRICE : Well, what about the construction of it, though. You know whenever you see one of those mobile homes burn, brother it all burns up. Are they requiring any more inflammable type material in the construction of mobile homes than they were?

TATE : Those protections that you are concerned about in regard to the material that is used exceed most of the standards presently used on site built homes. The point that I'm making is that manufactured housing, in the mobile home industry, already are using materials that are inflammable as much as they can be. Very strict home in that regard.

PRICE : Do you think they are adequate?

TATE : Yes, sir. I think the material that we are using in those mobile homes is as safe as it can be.

CHAIRMAN : Any further questions? We appreciate your testimony, Commissioner. Senator Doggett has sent up a committee substitute and that is what of course has been explained and what the witnesses have been talking on. It has been adopted. So Senator Doggett moves that SB 636 be reported back to the Senate with recommendation that it do not pass but that the substitute do pass and be printed in lieu thereof. Clerk call the roll. (Roll) There being eight ayes and no noes the committee substitute is reported.

DOGGETT : Mr. Chairman, I am that that substitute -- that the fees provided there more than cover -- it will actually be a revenue producer. That being the case, may I move it to the uncontested calendar? The committee there will have a chance to review it. The mobile home bill...

CHAIRMAN : There is no fiscal impact on SB 636. Senator Doggett asks unanimous consent for the Chair to certify it for the local and uncontested calendar. Is there objection? The Chair hears none. It is so ordered.

Amending and revising the Texas Mobile Home Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), to be known as the Texas Manufactured Housing Standards Act, providing for regulation of the construction, sale, transportation, and installation of manufactured housing and setting forth such regulation; and providing penalties.

By Doggett,

S.B. No. 636

Substitute the following for S.B. No. 636:

By Doggett

C.S.S.B. No. 636

As Amended  
by CEE

A BILL TO BE ENTITLED

AN ACT

~~relating to regulation of the manufacture, sale, and installation of mobile and modular homes; providing a penalty.~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

" <sup>Section</sup> Sec. 1. SHORT TITLE. This Act may be cited as the Texas Manufactured Housing [~~Mobile Homes~~] Standards Act. "

SECTION 2. Section 2, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

" <sup>Section</sup> Sec. 2. PURPOSE. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to provide for the full protection of the consumer and to prevent certain discriminations that exist in the state with regard to manufactured housing. The legislature finds that it is the

1 ~~responsibility of the state to provide for the protection of its~~  
 2 ~~citizens who desire to purchase housing by imposing certain~~  
 3 ~~regulations on the construction and installation, to provide~~  
 4 ~~economic stability of manufactured housing manufacturers,~~  
 5 ~~retailers, installers, and brokers, and to provide fair and~~  
 6 ~~effective consumer remedies [it is the legislature's intent to~~  
 7 ~~improve the general welfare and safety of the citizens of this~~  
 8 ~~state. The legislature finds that mobile homes have become a~~  
 9 ~~primary housing resource of many of the citizens of the state, that~~  
 10 ~~a growing awareness exists that many consumers are injured by~~  
 11 ~~unprincipled and dishonest members of the mobile home industry,~~  
 12 ~~that current warranties are deficient, that existing means of~~  
 13 ~~remedying these injustices are inadequate and do not provide a~~  
 14 ~~viable means for protecting the consumer, and that it is the~~  
 15 ~~responsibility of the state to provide for the protection of its~~  
 16 ~~citizens through the imposition of certain regulations on the~~  
 17 ~~mobile home industry].~~ In recognition of these findings, the  
 18 legislature deems it necessary to expand various regulatory powers  
 19 to deal with these problems. The legislature finds this to be the  
 20 most economical and efficient means of dealing with this problem  
 21 and serving the public interest. Accordingly, this Act shall be  
 22 liberally construed and applied to promote its underlying policies  
 23 and purposes. <sup>10 2/3</sup>

24 SECTION 3. Section 3, Texas Mobile Homes Standards Act, as  
 25 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 26 to read as follows:

27 <sup>10 2/3</sup> Sec. 3. DEFINITIONS. Whenever used in this Act, unless the



context otherwise requires, the following words and terms have the following meanings:

"(a) "Mobile home" means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

"(b) "Retailer" [~~"Dealer"~~] means any person [~~other than a manufacturer~~] engaged in the business of buying for resale, selling, or exchanging manufactured [~~mobile~~] homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer [~~dealer~~] unless engaged in the sale, exchange, or lease-purchase of two [~~three~~] or more manufactured [~~mobile~~] homes to consumers in any consecutive 12-month period.

"(c) "Manufacturer" means any person who constructs [~~manufactures~~] or assembles manufactured housing for sale, exchange, or lease-purchase within the state [~~mobile homes and sells them to dealers or consumers~~].

"(d) "Department" means the Texas Department of Labor and Standards. 3/4

"(e) "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

"(f) "Broker" means a person engaged by others to negotiate, or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of their manufactured [~~mobile~~] homes at

1 ~~the site where installed~~ to consumers. A broker may or may not be  
 2 an agent of any party involved in the transaction. No person shall  
 3 be considered a broker unless engaged in brokerage activities  
 4 related to the sale, exchange, or lease-purchase of two [three] or  
 5 more manufactured [mobile] homes to consumers in any consecutive  
 6 12-month period.

7 " (g) "Consumer" means any person who seeks or acquires by  
 8 purchase, exchange, or lease-purchase a manufactured [mobile] home  
 9 ~~[from a manufacturer, dealer, or broker].~~

10 " (h) "Decal" means a device or insignia issued by the  
 11 department that is permanently affixed to each transportable  
 12 section of each modular home to indicate compliance with the  
 13 standards, rules, and regulations established by the department  
 14 ~~["Salesperson" means any person who for any form of compensation~~  
 15 ~~sells or lease-purchases or offers to sell or lease purchase mobile~~  
 16 ~~homes to consumers as an employee or agent of a dealer].~~

17 " (i) "Seal" means a device or insignia issued by the  
 18 department to be affixed to used mobile homes to indicate  
 19 compliance with the standards, rules, and regulations established  
 20 by the department. The seal shall remain the property of the  
 21 department. 4/5

22 " (j) "Label" means a device or insignia issued by the  
 23 department to indicate compliance with the standards, rules, and  
 24 regulations established by the Department of Housing and Urban  
 25 Development, and is permanently affixed to each transportable  
 26 section of each mobile home manufactured after June 15, 1976, for  
 27 sale to a consumer.

1       “(k) “Installation,” when used in reference to manufactured  
 2 housing [~~a mobile home and when required by this Act~~], means the  
 3 transporting of manufactured homes to the place where they will be  
 4 used by the consumer, the construction of the foundation system,  
 5 whether temporary or permanent, and the placement of a manufactured  
 6 home on the foundation system, and includes supporting, blocking,  
 7 leveling, securing, anchoring, and proper connection of multiple or  
 8 expandable units and minor adjustments.

9       “(l) “Installer” means any person, including a retailer  
 10 [~~mobile home dealer~~] or manufacturer, who performs installation  
 11 functions on manufactured housing [~~mobile homes~~].

12       “(m) “Alteration” means the replacement, addition, and  
 13 modification, or removal of any equipment or its installation after  
 14 sale by a manufacturer to a retailer [~~dealer~~] but prior to sale and  
 15 installation by a retailer [~~dealer~~] to a purchaser which may affect  
 16 the construction, fire safety, occupancy, plumbing, heat-producing  
 17 or electrical system. It includes any modification made in the  
 18 manufactured [~~mobile~~] home which may affect the compliance of the  
 19 home with the standards, but it does not include the repair or  
 20 replacement of a component or appliance requiring plug-in to an <sup>3/6</sup>  
 21 electrical receptacle where the replaced item is of the same  
 22 configuration and rating as the one being replaced. It also does  
 23 not include the addition of an appliance requiring “plug-in” to an  
 24 electrical receptacle, which appliance was not provided with the  
 25 manufactured [~~mobile~~] home by the manufacturer, if the rating of  
 26 the appliance does not exceed the rating of the receptacle to which  
 27 it is connected.

1       “(n) “Lease-purchase” means to enter into a lease contract  
2 with a provision conferring on the lessee an option to purchase the  
3 manufactured [mobile] home.

4       “(o) “Commissioner” means the Commissioner of the Texas  
5 Department of Labor and Standards.

6       “(p) “Code” means the Texas Manufactured Housing [Mobile  
7 Homes] Standards Code.

8       “(q) “Modular home” means a structure or building module that  
9 is manufactured at a location other than the location where it is  
10 installed and used as a residence by a consumer, transportable in  
11 one or more sections on a temporary chassis or other conveyance  
12 device, and designed to be used as a permanent dwelling when  
13 installed and placed upon a permanent foundation system. The term  
14 includes the plumbing, heating, air-conditioning, and electrical  
15 systems contained in the structure. The term does not include a  
16 mobile home as defined in this Act. *Insert House Am. #1*

17       “(r) “Salesperson” means any person who for any form of <sup>6/7</sup>  
18 compensation sells or lease-purchases or offers to sell or  
19 lease-purchase manufactured housing to consumers as an employee or  
20 agent of a retailer or broker.

21       “(s) “Manufactured housing” or “manufactured home” means a  
22 mobile home or a modular home or both.

23       “(t) “Registrant” means any person who has registered with  
24 the department and has been issued a certificate of registration as  
25 a manufactured housing manufacturer, retailer, broker, or  
26 installer. //

27       SECTION 4. Section 4, Texas Mobile Homes Standards Act, as

amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

<sup>11</sup> ~~Sec. 4.~~ MANUFACTURED HOUSING [MOBILE HOMES] STANDARDS. (a)

The department ~~shall~~ <sup>may</sup> adopt standards and requirements for the installation ~~[of plumbing, heating, and electrical systems]~~ and for the construction of manufactured housing, that [mobile homes as it determines] are reasonably necessary in order to protect the health, ~~[and]~~ safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

<sup>11</sup> (1) ~~[Said standards and requirements shall be reasonably consistent with the fundamental principles adopted or issued as ANSI Standard A119.1 and as amended from time to time by the American National Standards Institute (ANSI) applicable to mobile homes.]~~

<sup>11</sup> ~~[(2) It is unlawful for any person to sell or offer for sale within this state any mobile home that does not meet the standards and requirements adopted by the department pursuant to this Act.]~~

<sup>11</sup> ~~[(3)]~~ The requirements and [existing] standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, ~~[shall]~~ remain in full force and effect ~~[upon the effective date of this Act, and]~~ until amended in accordance with the procedure set forth in this section.

<sup>11</sup> (2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the

Housing and Community Development Act of 1974, entitled the  
National Mobile Home Construction and Safety Standards Act of 1974.

“(3) The department shall adopt standards and requirements  
for the construction of modular homes which shall not be less  
stringent than the standards and requirements for the construction  
of mobile homes.

“(b) The department shall adopt standards and requirements  
for the installation of all manufactured housing in the state that  
are necessary for the protection of the health, safety, and welfare  
of all the citizens. The standards must assure that manufactured  
housing in the first two tiers of coastal counties in the state is  
capable of withstanding winds of minimum hurricane-force velocity  
and that manufactured housing in all other counties of the state is  
capable of withstanding winds of a minimum gale-force velocity.

~~[The department may adopt such minimum standards as it deems~~  
~~necessary for the installation of mobile homes except those in the~~  
~~inventories of manufacturers and dealers within this state so that~~  
~~such mobile homes shall withstand winds of minimum hurricane force~~  
~~velocity within the first two tiers of coastal counties within this~~  
~~state and which shall withstand winds of minimum gale force~~  
~~velocity in all other counties. Compliance with such installation~~  
~~standards shall be the responsibility of the dealer or manufacturer~~  
~~(when the manufacturer sells mobile homes directly to consumers).]~~

“(1) The requirements and standards for the installation of  
mobile homes as adopted by the department in existence on August  
31, 1979, remain in force until amended in accordance with the  
procedure set forth in this section [counties and municipalities]

*delete everything after this*

1 ~~may, with the approval of the department, adopt more stringent~~  
2 ~~standards when necessary for the public health and safety].~~

3     <sup>00</sup> (2) All manufactured housing must be installed in compliance  
4 with the standards, rules, regulations, or administrative orders of  
5 the department ~~[No mobile home purchased or lease purchased after~~  
6 ~~the effective date of this Act shall be situated or located within~~  
7 ~~300 feet of any other mobile home, residence, or building, except~~  
8 ~~those in the inventories of manufacturers and dealers within this~~  
9 ~~state, unless such mobile home is installed in accordance with such~~  
10 ~~minimum standards].~~

11     <sup>00</sup> (3) The department may cooperate with all units of local  
12 government within this state in the establishment of inspection<sup>9/10</sup>  
13 training programs and, when requested, may authorize local units of  
14 government to make and perform inspection and enforcement  
15 activities related to the installation of manufactured housing  
16 ~~[mobile homes]~~ pursuant to contracts or other official designations  
17 and the rules and regulations of the department.

18     <sup>00</sup> (c) A political subdivision of this state, without the  
19 express approval of the department following a hearing on the  
20 matter, may not adopt different standards from those promulgated by  
21 the department for the construction or installation of manufactured  
22 housing within the political subdivision.

23     <sup>00</sup> (d) Before ~~[at least 30 days before]~~ the adoption or  
24 promulgation of any standards or requirements authorized by this  
25 section, any change in or addition to the standards authorized in  
26 this section, or ~~[for]~~ the approval of different ~~[more stringent]~~  
27 standards by any political subdivision ~~[county or municipality],~~

the department shall publish [~~in the Texas Register~~] a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act <sup>as amended</sup> (Article 6252-13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice, [including:

“(1) ~~a copy of the proposed changes and additions; and~~  
“(2) ~~the time and place that the department will consider any objections to the proposed changes and additions;~~

“(d) ~~After giving the notice required by Subsection (c) of this section, the department shall afford interested persons an opportunity to participate in the standards adoption process through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.]~~

“(e) ~~[The adoption of requirements and standards shall require the approval of and certification by the commissioner.]~~

“(f) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the department shall state the date it shall take effect.

“(g) ~~Immediately after their promulgation, the department shall publish in the Texas Register all requirements and standards or amendments thereto.~~

“(h) ~~The standards and requirements adopted or promulgated by the department for the installation of plumbing, heating, and electrical systems in mobile homes, for the body and frame design and construction of mobile homes, and for the installation of mobile homes shall be known as the Texas Mobile Homes Standards Code.]~~



1           SECTION 5.   Section 6, Texas Mobile Homes Standards Act, as  
2 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
3 to read as follows:

4       <sup>now</sup> Sec. 6. REGULATIONS.   (a)   It is unlawful for any  
5 manufacturer to construct [~~manufacture~~] mobile homes in this state  
6 for sale or resale unless such manufacturer has supplied the  
7 department with proof of acceptance by a Design Approval Primary  
8 Inspection Agency authorized by the Department of Housing and Urban  
9 Development, has purchased the required labels, and has all mobile  
10 homes manufactured in this state inspected by an accepted In-Plant <sup>11/12</sup>  
11 Inspection Agency authorized by the Department of Housing and Urban  
12 Development. It is unlawful for a manufacturer to ship mobile  
13 homes into the state for sale or resale unless the manufacturer has  
14 complied with all requirements of the National Mobile Home  
15 Construction and Safety Standards Act <sup>of 1974</sup> and all standards, rules, and  
16 regulations of the Department of Housing and Urban Development.

17       (b) It is unlawful for any manufacturer to construct modular  
18 homes in the state or to ship modular homes into the state for sale  
19 or resale unless constructed to the code and unless the  
20 manufacturer has received approval by the department of the design  
21 and specifications for the construction of its modular homes and of  
22 its quality control program to assure compliance with the  
23 requirements and standards of the Texas Manufactured Housing  
24 Standards Code, has purchased the required decals, and has the  
25 modular homes inspected pursuant to the regulations of the  
26 department [~~No alteration shall be made on any mobile home to which~~  
27 ~~a label has been affixed prior to installation without the prior~~

1 ~~written approval of the department or which is not in compliance~~  
 2 ~~with the rules and regulations of the department].~~

3 <sup>2</sup> (c) Before the sale of a manufactured home to a consumer and  
 4 before its installation, it is unlawful for any manufacturer,  
 5 retailer, broker, or installer to make any alteration on a  
 6 manufactured home to which a seal, label, or decal has been  
 7 affixed<sup>2</sup> or cause such an alteration to be made, unless prior  
 8 written approval has been obtained from the department [Each  
 9 manufacturer<sup>1/2</sup> and dealer of mobile homes shall establish and  
 10 maintain such records, make such reports, and provide such  
 11 information as the commissioner may reasonably require to enable  
 12 him to determine whether such manufacturer or dealer has acted or  
 13 is acting in compliance with this Act, and shall, upon request of a  
 14 person duly designated by the commissioner, permit such person to  
 15 inspect appropriate books, papers, records, and documents relevant  
 16 to determining whether such manufacturer or dealer has acted or is  
 17 acting in compliance with this Act].

18 <sup>2</sup> (d) It is unlawful for any retailer, broker, or salesperson  
 19 to sell, exchange, or lease-purchase<sup>2</sup> or offer to sell, exchange,  
 20 or lease-purchase<sup>2</sup> any manufactured home to a person in the state  
 21 for use as a residence or dwelling, unless the manufactured home has  
 22 affixed to it the appropriate seal, label, or decal ~~it is unlawful~~  
 23 for any manufacturer to sell any mobile home to a dealer in this  
 24 state if said dealer has not complied with the bonding or security  
 25 requirements of this Act].

26 <sup>2</sup> (e) It is unlawful for a manufacturer to sell, exchange, or  
 27 lease-purchase<sup>2</sup> or offer to sell, exchange, or lease-purchase a

*revised am. # 2*  
 1 manufactured home to any person in the state other than a *registered* licensed  
 2 retailer.

3 *"* (f) A person may not sell, exchange, or lease-purchase any  
 4 manufactured home to another person in the state for use as a  
 5 dwelling or residence, unless the manufactured home is habitable. *"*

6 SECTION 6. Section 7, Texas Mobile Homes Standards Act, as  
 7 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended *is/ly*  
 8 to read as follows:

9 *"* Sec. *How* 7. REGISTRATION. (a) A person may not construct or  
 10 assemble a manufactured home in the state or ship a manufactured  
 11 home into the state, unless the person is registered as a  
 12 manufactured housing manufacturer by the department and possesses a  
 13 valid manufacturer's certificate of registration.

14 *"* (b) A person may not sell, exchange, lease-purchase, or  
 15 offer to sell, exchange, or lease-purchase two or more manufactured  
 16 homes to consumers in the state in any consecutive 12-month period,  
 17 unless the person possesses a valid manufactured housing retailer's  
 18 certificate of registration.

19 *"* (c) A person may not offer to negotiate or negotiate for  
 20 others a bargain or contract for the sale, exchange, or  
 21 lease-purchase of two or more manufactured homes to consumers in  
 22 the state in any 12-month period, unless the person possesses a  
 23 valid manufactured housing broker's certificate of registration.

24 *"* (d) A person may not perform any installation functions on  
 25 manufactured housing in the state, unless the person possesses a  
 26 valid installer's certificate of registration.

27 *"* (e) Each applicant for a certificate of registration as a

1 manufacturer, retailer, broker, or installer must file with the  
2 department an application for registration containing the following  
3 information:

4 "(1) the legal name, address, and telephone number of the  
5 applicant:

6 "(2) the trade name by which the applicant does business, and  
7 if incorporated, the name registered with the secretary of state  
8 and the address of the business; and

9 "(3) the dates on which the applicant became the owner and  
10 operator of the business.

11 "(f) Each application for a certificate of registration must  
12 be accompanied by proof of the security required by this Act and  
13 payment of the required fee for the issuance of the certificate.

14 "(g) All certificates of registration are valid for one year  
15 from the date of issue and are renewable annually on payment of the  
16 annual fee; provided, however, that the initial certificates of  
17 registration issued to registrants as of September 1, 1979, may be  
18 issued for periods of less than one year and the annual fee shall  
19 be prorated proportionally.

20 "(h) The department by rule may adopt a system under which  
21 the licenses issued under this article expire on various dates  
22 during the year. For the year in which the expiration date is  
23 changed, license fees payable on the date of issuance shall be  
24 prorated on a monthly basis so that each licensee shall pay only  
25 that portion of the license fee that is applicable to the number of  
26 months during which the license is valid. On renewal of the  
27 license on the new expiration date, the total license fee is

1 payable.

2 <sup>15/16</sup> (i) If a change occurs in the information filed with the  
 3 department under Subsection (e) of this section, the applicant  
 4 shall file an amendment to his or her application that states the  
 5 correct information.

6 <sup>Insert New am. #3</sup> (j) While acting as an agent for a registrant, an employee is  
 7 covered by the business entity's certificate of registration and is  
 8 not required to be individually registered. An independent  
 9 contractor or business entity may not operate under the certificate  
 10 of registration of another business entity.

11 (k) The commissioner, after notice and hearing, may revoke  
 12 or suspend for a definite period of time and for a particular  
 13 geographic area any certificate of registration issued under this  
 14 Act if the commissioner finds that the registrant

15 <sup>pf</sup> (1) knowingly and willfully violated any provision of this  
 16 Act or any rule or regulation made pursuant to this Act after  
 17 receipt of actual notice of any failure to comply:

18 <sup>ex</sup> (2) without lawful authorization retained or converted any  
 19 monies, property, or any other thing of value from consumers in  
 20 the form of down payments, sales and use taxes, deposits, or  
 21 insurance premiums:

22 (3) failed to deliver proper title documents or certificates  
 23 of title to consumers:

24 (4) failed to give or breached any manufactured home  
 25 warranty required by this Act or by the Federal Trade Commission:

26 (5) engaged in any false, misleading, or deceptive acts or  
 27 practices as the term is set forth in and as those acts are

1 ~~declared unlawful by the provisions of Chapter 17, Subchapter E,~~  
 2 ~~Business & Commerce Code; or~~

3 ~~“(6) failed to furnish or file any reports required by the~~  
 4 ~~department for the administration and enforcement of this Act.~~

5 ~~“(1) The commissioner shall conduct any hearing involving the~~  
 6 ~~revocation or suspension of a certificate of registration in~~  
 7 ~~accordance with the Administrative Procedure and Texas Register Act,~~  
 8 ~~(Article 6252-13a, Vernon's Texas Civil Statutes). [DEALERS, it~~  
 9 ~~is unlawful for any dealer to sell or offer for sale to dealers or~~  
 10 ~~to the consumers of this state any mobile home manufactured after~~  
 11 ~~the adoption or promulgation of the code unless said mobile home~~  
 12 ~~complies with the code and bears a label.]~~

13 SECTION 7. Section 8, Texas Mobile Homes Standards Act, as  
 14 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 15 to read as follows:

16 ~~“(1) Sec. 8. USED MOBILE HOMES. A retailer or broker may not~~  
 17 ~~sell, exchange, or lease-purchase or negotiate for the sale,~~  
 18 ~~exchange, or lease-purchase of a used mobile home manufactured~~  
 19 ~~after December 12, 1969, unless an appropriate seal or label is~~  
 20 ~~affixed to it. If the used mobile home does not have a seal or~~  
 21 ~~label, the retailer or broker must apply to the department for a~~  
 22 ~~seal with an affidavit that the manufactured home is~~  
 23 ~~habitable. [SEAL OF APPROVAL. Any dealer who has acquired a used~~  
 24 ~~mobile home without a seal or label shall apply to the department~~  
 25 ~~for a seal. The application for a seal shall include an affidavit~~  
 26 ~~stating that the unit has been brought up to or meets code~~  
 27 ~~requirements in effect at the time the mobile home was~~

~~manufactured]~~ 11

*Subsection (b),*

SECTION 8. *§* Section 9(b) Texas Mobile Homes Standards Act,  
as amended (Article 5221f, Vernon's Texas Civil Statutes), is  
amended to read as follows:

"(b) The department shall adopt rules and regulations,  
promulgate administrative orders, and take all action necessary to  
assure compliance with the intent and purpose of this Act to  
effectuate and to provide for uniform enforcement of all provisions  
of this Act and of the Texas Manufactured Housing Standards Code.

The department shall make and enforce rules and regulations  
reasonably required to effectuate ~~[all provisions of this Act and]~~  
the notification and correction procedures provided in Section 615  
of the National Mobile Home Construction and Safety Standards Act  
of 1974. 11

*Subsection (h),*

SECTION 9. *§* Section 9(h) Texas Mobile Homes Standards Act,  
as amended (Article 5221f, Vernon's Texas Civil Statutes), is  
amended to read as follows:

"(h) The department through its authorized representatives is  
authorized to enter at reasonable times and without advance notice  
any factory, warehouse, ~~[or]~~ establishment, or location of a  
registrant to make any inspections that are reasonably required to  
determine whether a registrant is in compliance with this Act and  
the rules, regulations, and administrative orders promulgated under  
this Act [in which mobile homes are manufactured, stored, or held  
for sale]. 18/19

*Subsection (i),*

SECTION 10. *§* Section 9(i) Texas Mobile Homes Standards Act,  
as amended (Article 5221f, Vernon's Texas Civil Statutes), is

amended to read as follows:

(j) The department may employ state inspectors to carry out the functions required of the department pursuant to this Act, to effectuate the provisions of this Act, and to enforce the rules, regulations, and administrative orders promulgated pursuant to this Act. The department may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this Act ~~[The department may establish and required such training programs in the concept, techniques, and inspection of mobile homes for the personnel of local governments as the department considers necessary].~~

SECTION 11. <sup>Subsection (k)</sup> Section 9(k), Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(k) The department may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this Act or the rules and regulations of the department to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code ~~[The department may, at its discretion, accept in plant inspection reports by a recognized body or agency having follow up in plant inspection service certifying that the mobile homes comply with the code].~~

SECTION 12. Section 9, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended by adding Subsections (l) and (m) to read as follows:

(l) The department may enter into contracts with the



1 Department of Housing and Urban Development or its designees to  
2 monitor the Department of Housing and Urban Development programs.

3 (m) When necessary or required by law, the department may  
4 obtain inspection search warrants.

5 SECTION 13. Section 11, Texas Mobile Homes Standards Act, as  
6 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
7 to read as follows:

8 Sec. 11. FEES. (a) There shall be a fee of \$15 for the  
9 inspection of the installation of ~~the~~ mobile homes which shall be  
10 paid by the installer of the mobile home ~~[dealer or manufacturer~~  
11 ~~who sold the mobile home to the consumer]~~. Said fee shall be paid  
12 to the state~~l, This fee shall be paid within 30 days]~~ and shall  
13 accompany notification to the department of the exact location of  
14 the mobile home. The department shall make fee distributions to  
15 local governmental subdivisions performing inspections pursuant to  
16 contracts or other official designations.

17 (b) Looking for guidance to the rules and regulations  
18 promulgated under Title VI of the Housing and Community Development  
19 Act of 1974 and to that Act itself, the commissioner shall set fees  
20 for the following functions:

21 (1) There shall be a schedule of fees for the review of  
22 mobile home blueprints and supporting data when the department acts  
23 as a Design Approval Primary Inspection Agency. This fee shall be  
24 paid by the manufacturer seeking approval.

25 (2) There shall be an inspection fee on all mobile homes  
26 manufactured or assembled within the State of Texas. This fee  
27 shall be paid by the manufacturer of the home. The manufacturer

1 shall also be charged for the actual cost of travel for  
2 representatives of the department to and from the manufacturing  
3 facility.

4 (3) The fees in Subsections (1) and (2) shall not be  
5 applicable when an accepted inspection agency authorized by the  
6 Department of Housing and Urban Development, other than the  
7 department, acts as the Design Approval Primary Inspection Agency  
8 or the In-Plant Inspection Agency.

9 (4) There shall be a fee for inspection of ~~new or~~ used  
10 mobile homes at retailer ~~[dealer]~~ locations to check compliance  
11 with the code and to determine if the mobile home has been damaged  
12 in transit. This fee shall be paid by the retailer ~~[dealer]~~ in  
13 possession of the mobile homes at the time the inspection was made.  
14 For any given mobile home at a retailer ~~[dealer]~~ location, this fee  
15 may not be assessed more than one time.

16 (5) There shall be a fee charged on an hourly basis for  
17 inspection of alterations made upon the structure, plumbing,  
18 heating, or electrical systems of mobile homes. This fee shall be  
19 paid by the person ~~[dealer]~~ making the alteration. The person  
20 ~~[dealer]~~ shall also be charged for the actual cost of travel for  
21 representatives of the department to and from the place of  
22 inspection ~~[dealership making the alteration]~~. 2/22

23 (6) There shall be a fee for the issuance of seals for used  
24 mobile homes which shall be paid by the retailer or broker  
25 ~~[dealer]~~.

26 (c) The installer of a modular home shall pay to the state  
27 a fee set by the commissioner for the inspection of the

1 ~~installation of the modular home. Before installation the~~  
 2 ~~installer shall notify the department of the exact location of the~~  
 3 ~~modular home and shall pay the fee [Fees assessed under this Act~~  
 4 ~~shall be paid to the State Treasury and placed in the General~~  
 5 ~~Revenue Fund except as otherwise provided in Subsection (a) of this~~  
 6 ~~section. In addition, the reimbursements for travel expenses~~  
 7 ~~provided in Parts (2) and (4), Subsection (b) of this section, are~~  
 8 ~~hereby reappropriated to the department for use in its mobile home~~  
 9 ~~program].~~

10 ~~“(d) Following a hearing pursuant to the Administrative~~  
 11 ~~Procedure and Texas Register Act~~ <sup>as amended</sup> ~~(Article 6252-13a, Vernon's Texas~~  
 12 ~~Civil Statutes), the commissioner shall set fees for the following~~  
 13 ~~functions:~~

14 ~~“(1) a fee paid by the manufacturer for the review of modular~~  
 15 ~~home designs, blueprints, and specifications:~~

16 ~~“(2) an inspection fee paid by the manufacturer for all~~  
 17 ~~modular homes manufactured in the state and for all modular homes~~  
 18 ~~manufactured outside of the state to be transported to retailers or~~  
 19 ~~consumers in the state:~~

20 ~~“(3) a fee charged on an hourly basis and paid by the person~~  
 21 ~~making the alteration for an inspection of the alterations made on~~ 22/23  
 22 ~~a modular home after construction and certification by the~~  
 23 ~~manufacturer and before the closing of a sale to the consumer:~~

24 ~~“(4) annual fees for the issuance and renewal of~~  
 25 ~~manufacturers', retailers', brokers', and installers' certificates~~  
 26 ~~of registration: and~~

27 ~~“(5) a fee for the issuance of decals that shall be paid by~~

1 the manufacturer.

2 "(e) The person required to pay an inspection fee set in  
 3 accordance with Subsection (d) of this section shall pay the cost  
 4 of travel to and from the place of the inspection for  
 5 representatives of the department who make the inspection.

6 "(f) All fees assessed under this Act shall be paid to the  
 7 State Treasurer and placed in the General Revenue Fund.

8 "(g) The [existing] fees charged by the department in effect  
 9 August 31, 1979, shall remain in effect [upon the effective date of  
 10 this Act and] until the new schedule of fees set forth in  
 11 [Subsection (b) of] this section has been promulgated and adopted.

12 SECTION 14. Section 13, Texas Mobile Homes Standards Act, as  
 13 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 14 to read as follows:

15 "Sec. 13. SECURITY REQUIRED. (a) The department may not  
 16 issue a certificate of registration, unless the applicant first  
 17 files [As of the effective date of this Act, manufacturers,  
 18 dealers, and salespersons are required to file either] a surety  
 19 [performance] bond, a cash deposit, or other security in such form  
 20 as the commissioner may prescribe and a written irrevocable  
 21 designation of the commissioner as agent for service of legal  
 22 process [along with such information as the commissioner may deem  
 23 necessary to insure compliance with the intent of this Act].

24 "(b) If a surety [performance] bond is filed, it shall be  
 25 continuous and remain in effect until cancelled by the surety  
 26 company with notice as provided by this Act. A cash deposit or  
 27 other security need not be posted annually so long as the

1 applicable amount specified in [~~Subsection (1) of~~] this section  
 2 remains posted. If a claim is made against a cash deposit causing  
 3 the deposit to be lessened, the depositor has 20 calendar days in  
 4 which to deposit additional money or other security so that  
 5 compliance may be had with the requirements of [~~Subsection (1) of~~]  
 6 this section. If the deficit is not eliminated within 20 days, ~~the~~  
 7 certificate of registration of the inadequately covered  
 8 manufacturer, retailer, broker, or installer is immediately  
 9 suspended. If a bond is cancelled, the certificate of registration  
 10 is immediately suspended [~~any subsequent contract between a~~  
 11 ~~consumer and the inadequately covered dealer, manufacturer, or~~  
 12 ~~salesperson is voidable at the option of the consumer~~].

13 ~~[(c) At the time a consumer enters into a contract, if a~~  
 14 ~~manufacturer, dealer, or salesperson has neither posted a cash~~  
 15 ~~deposit or other security, nor filed a performance bond, the~~  
 16 ~~contract between a consumer and that manufacturer, dealer, or~~  
 17 ~~salesperson is voidable at the option of the consumer.]~~

18 ~~[(c) [(d)]~~ If a cash deposit or other security is posted, the  
 19 interest from said deposit shall go to the depositor. *34/25*

20 ~~[(d) [(e)]~~ The bond shall be a surety bond issued by a  
 21 company authorized to do business in this state and shall be in  
 22 conformity with the Insurance Code. The cash deposit or other  
 23 security shall be in such a form as the commissioner may deem  
 24 appropriate [~~to insure compliance with the intent of this Act~~].

25 ~~[(e) [(f)]~~ The bond, cash deposit, or other security shall be  
 26 to the state for the use by a consumer, the state, or any political  
 27 subdivision thereof who secures any judgment [~~establishes~~

1 ~~liability~~ against a manufacturer, ~~retailer, broker, installer~~  
2 ~~[dealer]~~ or salesperson for damages, restitution, or expenses  
3 including reasonable attorney's fees resulting from a cause of  
4 action connected with the sale, ~~[or]~~ lease-purchase, ~~exchange,~~  
5 ~~brokerage, or installation~~ of a manufactured ~~[mobile]~~ home,  
6 including but not limited to:

7 "(1) retention or conversion of money, property, or any other  
8 thing of value from consumers in the form of down payments, any  
9 sales and use taxes, deposits, or insurance premiums;

10 "(2) failure to deliver proper title documents or  
11 certificates of title to consumers;

12 "(3) failure to give or the breach of any manufactured home  
13 warranty required by this Act or by the Federal Trade Commission;  
14 or

15 "(4) engaging in any false, misleading, or deceptive acts or  
16 practices as the term is set forth in and as those acts or  
17 practices are declared unlawful by the provisions of Chapter 17,  
18 Subchapter E, Business & Commerce Code. The bond or other security  
19 shall not be liable for judgments resulting from tort claims,  
20 except as expressly set forth hereinabove, nor for any punitive,  
21 exemplary, or treble damages. A consumer, the state, or any  
22 political subdivision thereof may recover against the principal or  
23 surety jointly and severally for such damages, restitution, or  
24 expenses; provided, however, that in no event shall a surety or the  
25 cash deposit or other security posted under this section be liable  
26 for an amount in excess of actual damages, restitution, or expenses  
27 including reasonable attorney's fees. Any judgment obtained

1 against a principal is conclusive against the surety or other  
 2 security if notice of the filing of suit is given as required by  
 3 this section. The bond or other security shall be open to  
 4 successive claims up to the amount of face value of the bond or  
 5 other required security. The surety shall not be liable for  
 6 successive claims in excess of the bond amount, regardless of the  
 7 number of years the bond remains in force.

8 (f) (g) A consumer shall inform the manufacturer,  
 9 retailer, ~~broker~~ installer, <sup>educator</sup> or salesperson, and the department of  
 10 any claim against the bond or security no later than two years  
 11 after the purchase of the mobile home. Whenever the department  
 12 receives notice of a claim against a bond, the department shall  
 13 promptly notify the bonding company involved. If the consumer  
 14 claim results in a private lawsuit being filed by the consumer, the  
 15 consumer shall notify the attorney general's office and the surety  
 16 company by certified mail of the filing of the lawsuit. At the  
 17 time of sale or delivery of a manufactured [mobile] home to a  
 18 consumer, the consumer must be given conspicuous written  
 19 notification of this two-year limit and the notice requirements.

20 (g) (h) Any manufacturer, retailer, broker, or installer  
 21 [or dealer] who maintains a place of business at one or more  
 22 locations shall file with the department a separate bond or other  
 23 security for each location. A manufactured home installed on a  
 24 permanent foundation system and offered for sale as real estate is  
 25 not a business location that requires a bond.

26 (h) (i) A manufacturer shall be bonded, supply a cash  
 27 deposit or other security in the amount of \$100,000. A retailer

1 ~~[dealer]~~ shall be bonded, supply a cash deposit, or other security  
 2 in the amount of \$25,000. A salesperson shall be bonded, supply a  
 3 cash deposit or other security in the amount of \$2,000. A broker  
 4 shall be bonded, supply a cash deposit or other security in the  
 5 amount of \$15,000. An installer shall be bonded, supply a cash  
 6 deposit or other security in the amount of \$2,000. A retailer  
 7 holding a valid certificate of registration shall not be required  
 8 to be bonded or file any security to secure a certificate of  
 9 registration as a broker or an installer.

10 ~~cc (1) [(f)]~~ The bonding company must provide written  
 11 notification to the department at least 60 days prior to the  
 12 cancellation of any bond required by this Act. Any cash deposit or  
 13 other security on file with the department shall remain on file  
 14 with the department two years after the person ~~[manufacturer or~~  
 15 ~~dealer]~~ ceases ~~[the]~~ business as a manufacturer, retailer, broker,  
 16 or installer or salesperson or at ~~[of manufacturing or selling~~  
 17 ~~mobile homes or]~~ such time as the department may determine that no  
 18 claims exist against the cash deposit or security. 27/58

19 ~~cc [(k)] Brokers shall be considered to be dealers. Brokers~~  
 20 ~~shall not be considered to be dealers if they possess a valid real~~  
 21 ~~estate broker or salesperson license as required by The Real Estate~~  
 22 ~~License Act (Article 6573(a), Vernon's Texas Civil Statutes). In~~  
 23 ~~order for a licensed real estate broker or salesperson to qualify~~  
 24 ~~for this exemption he or she may only sell used mobile homes~~  
 25 ~~installed on and a part of the sale of real property.] //~~

26 SECTION 15. Section 14, Texas Mobile Homes Standards Act, as  
 27 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended



1 to read as follows:

2       <sup>14</sup> Sec. 14. WARRANTIES. (a) After the effective date of this  
3 Act, all new manufactured [~~mobile~~] homes sold [~~by a manufacturer or~~  
4 ~~dealer~~] to consumers in the state shall be covered by the  
5 manufactured [~~mobile~~] home warranty set forth in this section  
6 [~~Act~~].

7       (b) The manufactured [~~mobile~~] home warranty provided for in  
8 this Act is given by [~~shall apply to~~] the manufacturer of the  
9 manufactured [~~mobile~~] home [~~as well as to the dealer who sells the~~  
10 ~~mobile home to the buyer, except as otherwise provided~~].

11       (c) The manufactured [~~mobile~~] home warranty shall be set  
12 forth in a separate written document; shall be delivered to the  
13 consumer by the retailer [~~dealer~~] at the time the contract of sale  
14 is signed; and shall contain, but is not limited to, the following  
15 terms: 28/29

16       (1) that the manufactured [~~mobile~~] home complies with the  
17 code;

18       (2) that the warranty shall be in effect for a period of at  
19 least one year from date of sale or initial installation, whichever  
20 is later [~~set up~~];

21       (3) that the manufactured [~~mobile~~] home and all appliances  
22 and other equipment installed and included therein by the  
23 manufacturer or retailer [~~dealer~~] are free from defects in  
24 materials or workmanship;

25       (4) that the manufactured home is installed in accordance  
26 with all standards, rules, regulations, administrative orders, and  
27 requirements of the department [~~that installation functions~~]

~~performed on the mobile home are performed in compliance with this Act, and other applicable state requirements, provided that such installation operations shall not be performed by any person other than a dealer, manufacturer, or their duly authorized agents];~~

“(5) that the manufacturer or the retailer [dealer] or both shall take appropriate corrective action within a reasonable period of time in instances of defects in materials or workmanship, or failures to comply with the code;

~~“(6) [that the manufacturer and dealer shall be jointly and severally liable to the consumer for the fulfillment of the terms of the mobile home warranty, except as provided in Part (4), Subsection (c) of this section, and that the consumer may notify either one or both of the need for appropriate corrective action in instances of defects of workmanship, or failures to comply with the code;~~

“(7) that the warranty contains the address of the retailer [dealer] and manufacturer where notices of defects may be given; and

“(7) that the purchaser shall notify either the manufacturer or the retailer or both in writing of the need for appropriate corrective action in instances of defects in materials or workmanship or in failures to comply with the code.

“(d) The manufacturer and retailer are jointly and severally liable to the consumer for the fulfillment of the manufactured home warranty.

“(e) For all installations not covered by the warranty as set forth in Subsection (c) of this section, the installer shall give

1 each manufactured home owner a written warranty that the  
2 installation of the home was done in accordance with all standards,  
3 requirements, rules, regulations, and administrative orders of the  
4 department. //

5 SECTION 16. Section 17, Texas Mobile Homes Standards Act, as  
6 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
7 to read as follows:

8 "Sec. 17. PENALTIES. (a) A person, individual, or director,  
9 officer, or agent of a corporation who knowingly and willfully  
10 violates a provision of this Act or any rule, [or] regulation, or  
11 administrative order of the department in a manner that threatens  
12 the health or safety of any purchaser or consumer commits a  
13 misdemeanor and on conviction shall be fined not more <sup>30</sup>/<sub>31</sub> than \$1,000  
14 or shall be confined in the county jail not longer than one year,  
15 or both [commits a Class A misdemeanor].

16 "(b) Any person [dealer, manufacturer, or salesperson] who  
17 violates any provision of this Act or the rules and regulations of  
18 the department may be assessed a civil penalty to be paid to the  
19 State of Texas in an amount not to exceed \$1,000 for each such  
20 violation as the court may deem proper, except that the maximum  
21 civil penalty may not exceed \$1,000,000 for any related series of  
22 violations occurring within one year from the date of the first  
23 violation.

24 "(c) Whenever it appears that any person [dealer,  
25 manufacturer, or salesperson] has violated or is threatening to  
26 violate any of the provisions of this Act or of the rules, [and]  
27 regulations, and administrative orders of the department, either

the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person [~~such-dealer, manufacturer, or salesperson~~] from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

" (d) Failure by a manufacturer or retailer [~~dealer~~] to comply with the warranty provisions [~~in Section 14~~] of this Act, or any implied warranties or the violation of any provision of this Act by any person [~~the code provisions in Section 4 of this Act~~] is [~~considered~~] a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code ~~17~~ and is actionable pursuant to said subchapter. <sup>31</sup> As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of [~~with~~] the remedies in this Act. <sup>32</sup> //

SECTION 17. Section 18, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

" <sup>11</sup> ~~Section~~ <sup>18</sup> MISCELLANEOUS PROVISIONS. (a) Any waiver by a consumer of the provisions of this Act is contrary to public policy and is unenforceable and void.

" (b) No provision of this Act shall exclude any other remedy available at law or equity to the consumer.

" (c) If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

1 (d) If a retailer, broker, or installer does not possess a  
 2 valid certificate of registration at the time of entering into any  
 3 contract with a consumer, the contract between the consumer and the  
 4 retailer, broker, or installer is voidable at the option of the  
 5 consumer.

6 (e) Nothing in this Act shall be construed to modify or  
 7 amend any provisions of The Real Estate License Act (Article 6573a,  
 8 Vernon's Texas Civil Statutes).

9 (f) Notwithstanding any provisions of any other statute,  
 10 regulation, or ordinance to the contrary, an installer is not  
 11 required to secure any permit, certificate, or license or pay any  
 12 fee for the transportation of manufactured housing to the place  
 13 where it is to be installed except as required by the department or  
 14 the <sup>State</sup> Texas Department of Highways and Public Transportation. The <sup>State</sup>  
 15 Department of Highways and Public Transportation shall cooperate  
 16 with the department in the routing of the transportation of housing  
 17 and shall not issue any permits for the transportation of  
 18 manufactured housing except to persons holding valid certificates  
 19 of registration issued by the department.

20 SECTION 18. Chapter 18, Code of Criminal Procedure, 1965, as  
 21 amended, is amended by adding Article 18.051 to read as follows:

22 Article 18.051. WARRANTS FOR REPRESENTATIVES OF THE TEXAS  
 23 DEPARTMENT OF LABOR AND STANDARDS. (a) A search warrant may be  
 24 issued to a representative of the Texas Department of Labor and  
 25 Standards for the purpose of allowing inspection of any specified  
 26 premises to determine the presence of a violation of the Texas  
 27 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas

1 Civil Statutes) or the Texas Manufactured Housing Standards Code.

2 (b) A magistrate may not issue a search warrant under this  
3 article unless there is a presentation of evidence of probable  
4 cause to believe that a violation is present in the premises sought  
5 to be inspected.

6 (c) In determining probable cause, the magistrate is not  
7 limited to evidence of specific knowledge and may consider any of  
8 the following:

9 (1) previous deviations, defects, or violations found  
10 present in the premises;

11 (2) the type of premises;

12 (3) the purpose for which the premises are used; and

13 (4) the presence of code deviations or defects or violations  
14 in and the general condition of premises near the premises sought  
15 to be inspected.

16 SECTION <sup>18</sup>19. Sections 5, 10, and 15, Texas Mobile Homes  
17 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
18 Statutes), are repealed.

19 SECTION <sup>19</sup>20. This Act takes effect September 1, 1979. The  
20 standards and requirements for the construction and installation of  
21 modular homes established by this Act are effective January 1,  
22 1980.

23 SECTION <sup>20</sup>21. The importance of this legislation and the  
24 crowded condition of the calendars in both houses create an  
25 emergency and an imperative public necessity that the  
26 constitutional rule requiring bills to be read on three several  
27 days in each house be suspended, and this rule is hereby suspended.

I certify that the attached is a true and correct  
copy of SB # 636, which was  
received from the Senate on 4-19-79, and  
referred to the Committee on Business & Industry  
*[Signature]*  
Chief Clerk of the House

April 19 1979 Engrossed  
*[Signature]*  
Engrossing Clerk

By: Doggett, Parker  
(Semos)

S.B. No. 636

A BILL TO BE ENTITLED

AN ACT

amending and revising the Texas Mobile Home Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), to be known as the Texas Manufactured Housing Standards Act; providing for regulation of the construction, sale, transportation, and installation of manufactured housing and setting forth such regulation; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. SHORT TITLE. This Act may be cited as the Texas Manufactured Housing [~~Mobile Homes~~] Standards Act."

SECTION 2. Section 2, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. PURPOSE. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to

1 provide for the full protection of the consumer and to prevent  
2 certain discriminations that exist in the state with regard to  
3 manufactured housing. The legislature finds that it is the  
4 responsibility of the state to provide for the protection of its  
5 citizens who desire to purchase housing by imposing certain  
6 regulations on the construction and installation, to provide  
7 economic stability of manufactured housing manufacturers,  
8 retailers, installers, and brokers, and to provide fair and  
9 effective consumer remedies ~~[it is the legislature's intent to~~  
10 ~~improve the general welfare and safety of the citizens of this~~  
11 ~~state. The legislature finds that mobile homes have become a~~  
12 ~~primary housing resource of many of the citizens of the state, that~~  
13 ~~a growing awareness exists that many consumers are injured by~~  
14 ~~unprincipled and dishonest members of the mobile home industry,~~  
15 ~~that current warranties are deficient, that existing means of~~  
16 ~~remedying these injustices are inadequate and do not provide a~~  
17 ~~viable means for protecting the consumer, and that it is the~~  
18 ~~responsibility of the state to provide for the protection of its~~  
19 ~~citizens through the imposition of certain regulations on the~~  
20 ~~mobile home industry]~~. In recognition of these findings, the  
21 legislature deems it necessary to expand various regulatory powers  
22 to deal with these problems. The legislature finds this to be the  
23 most economical and efficient means of dealing with this problem  
24 and serving the public interest. Accordingly, this Act shall be  
25 liberally construed and applied to promote its underlying policies  
26 and purposes."



SECTION 3. Section 3, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. DEFINITIONS. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

"(a) 'Mobile home' means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

"(b) 'Retailer' [~~'Dealer'~~] means any person [~~other than a manufacturer~~] engaged in the business of buying for resale, selling, or exchanging manufactured [~~mobile~~] homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer [~~dealer~~] unless engaged in the sale, exchange, or lease-purchase of two [~~three~~] or more manufactured [~~mobile~~] homes to consumers in any consecutive 12-month period.

"(c) 'Manufacturer' means any person who constructs [~~manufactures~~] or assembles manufactured housing for sale, exchange, or lease-purchase within the state [~~mobile homes and sells them to dealers or consumers~~].

"(d) 'Department' means the Texas Department of Labor and Standards.

"(e) 'Person' means an individual, partnership, company, corporation, association, or other group, however organized.

"(f) 'Broker' means a person engaged by others to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of their manufactured ~~[mobile]~~ homes at the site where installed to consumers. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange, or lease-purchase of two ~~[three]~~ or more manufactured ~~[mobile]~~ homes to consumers in any consecutive 12-month period.

"(g) 'Consumer' means any person who seeks or acquires by purchase, exchange, or lease-purchase a manufactured ~~[mobile]~~ home ~~[from a manufacturer, dealer, or broker]~~.

"(h) 'Decal' means a device or insignia issued by the department that is permanently affixed to each transportable section of each modular home to indicate compliance with the standards, rules, and regulations established by the department ~~['Salesperson' means any person who for any form of compensation sells or lease purchases or offers to sell or lease purchase mobile homes to consumers as an employee or agent of a dealer]~~.

"(i) 'Seal' means a device or insignia issued by the department to be affixed to used mobile homes to indicate compliance with the standards, rules, and regulations established by the department. The seal shall remain the property of the department.

1           "(j) 'Label' means a device or insignia issued by the  
2 department to indicate compliance with the standards, rules, and  
3 regulations established by the Department of Housing and Urban  
4 Development, and is permanently affixed to each transportable  
5 section of each mobile home manufactured after June 15, 1976, for  
6 sale to a consumer.

7           "(k) 'Installation,' when used in reference to manufactured  
8 housing [~~a mobile home and when required by this Act~~], means the  
9 transporting of manufactured homes to the place where they will be  
10 used by the consumer, the construction of the foundation system,  
11 whether temporary or permanent, and the placement of a manufactured  
12 home on the foundation system, and includes supporting, blocking,  
13 leveling, securing, anchoring, and proper connection of multiple or  
14 expandable units and minor adjustments.

15           "(l) 'Installer' means any person, including a retailer  
16 [~~mobile home dealer~~] or manufacturer, who performs installation  
17 functions on manufactured housing [~~mobile homes~~].

18           "(m) 'Alteration' means the replacement, addition, and  
19 modification, or removal of any equipment or its installation after  
20 sale by a manufacturer to a retailer [~~dealer~~] but prior to sale and  
21 installation by a retailer [~~dealer~~] to a purchaser which may affect  
22 the construction, fire safety, occupancy, plumbing, heat-producing  
23 or electrical system. It includes any modification made in the  
24 manufactured [~~mobile~~] home which may affect the compliance of the  
25 home with the standards, but it does not include the repair or  
26 replacement of a component or appliance requiring plug-in to an

1 electrical receptacle where the replaced item is of the same  
2 configuration and rating as the one being replaced. It also does  
3 not include the addition of an appliance requiring 'plug-in' to an  
4 electrical receptacle, which appliance was not provided with the  
5 manufactured [~~mobile~~] home by the manufacturer, if the rating of  
6 the appliance does not exceed the rating of the receptacle to which  
7 it is connected.

8 "(n) 'Lease-purchase' means to enter into a lease contract  
9 with a provision conferring on the lessee an option to purchase the  
10 manufactured [~~mobile~~] home.

11 "(o) 'Commissioner' means the Commissioner of the Texas  
12 Department of Labor and Standards.

13 "(p) 'Code' means the Texas Manufactured Housing [~~Mobile~~  
14 ~~Homes~~] Standards Code.

15 "(q) 'Modular home' means a structure or building module  
16 that is manufactured at a location other than the location where it  
17 is installed and used as a residence by a consumer, transportable  
18 in one or more sections on a temporary chassis or other conveyance  
19 device, and designed to be used as a permanent dwelling when  
20 installed and placed upon a permanent foundation system. The term  
21 includes the plumbing, heating, air-conditioning, and electrical  
22 systems contained in the structure. The term does not include a  
23 mobile home as defined in this Act.

24 "(r) 'Salesperson' means any person who for any form of  
25 compensation sells or lease-purchases or offers to sell or  
26 lease-purchase manufactured housing to consumers as an employee or

1 agent of a retailer or broker.

2 "(s) 'Manufactured housing' or 'manufactured home' means a  
3 mobile home or a modular home or both.

4 "(t) 'Registrant' means any person who has registered with  
5 the department and has been issued a certificate of registration as  
6 a manufactured housing manufacturer, retailer, broker, or  
7 installer."

8 SECTION 4. Section 4, Texas Mobile Homes Standards Act, as  
9 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
10 to read as follows:

11 "Section 4. MANUFACTURED HOUSING [MOBILE HOMES] STANDARDS.

12 (a) The department shall [may] adopt standards and requirements  
13 for the installation [of plumbing, heating, and electrical systems]  
14 and for the construction of manufactured housing, that [mobile  
15 homes as it determines] are reasonably necessary in order to  
16 protect the health, [and] safety, and welfare of the occupants and  
17 the public. The collection of these standards and requirements is  
18 the Texas Manufactured Housing Code.

19 "(1) [Said standards and requirements shall be reasonably  
20 consistent with the fundamental principles adopted or issued as  
21 ANSI Standard A119.1 and as amended from time to time by the  
22 American National Standards Institute (ANSI) applicable to mobile  
23 homes.

24 "[(2) It is unlawful for any person to sell or offer for  
25 sale within this state any mobile home that does not meet the  
26 standards and requirements adopted by the department pursuant to

~~this Act.~~

"~~(3)~~ The requirements and ~~[existing]~~ standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, ~~[shall]~~ remain in full force and effect ~~[upon the effective date of this Act, and]~~ until amended in accordance with the procedure set forth in this section.

"(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.

"(3) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

"(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of minimum hurricane-force velocity and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity. ~~[The department may adopt such minimum standards as it deems necessary for the installation of mobile homes except those in the~~

~~inventories of manufacturers and dealers within this state so that such mobile homes shall withstand winds of minimum hurricane force velocity within the first two tiers of coastal counties within this state and which shall withstand winds of minimum gale force velocity in all other counties. Compliance with such installation standards shall be the responsibility of the dealer or manufacturer (when the manufacturer sells mobile homes directly to consumers).]~~

"(1) The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section ~~[Counties and municipalities may, with the approval of the department, adopt more stringent standards when necessary for the public health and safety].~~

"(2) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department ~~[No mobile home purchased or lease purchased after the effective date of this Act shall be situated or located within 300 feet of any other mobile home, residence, or building, except those in the inventories of manufacturers and dealers within this state, unless such mobile home is installed in accordance with such minimum standards].~~

"(3) The department may cooperate with all units of local government within this state in the establishment of inspection training programs and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of manufactured housing

~~[mobile homes]~~ pursuant to contracts or other official designations  
and the rules and regulations of the department.

"(c) A political subdivision of this state, without the express approval of the department following a hearing on the matter, may not adopt different standards from those promulgated by the department for the construction or installation of manufactured housing within the political subdivision.

"(d) Before ~~[(at least 30 days before)]~~ the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or ~~[(for)]~~ the approval of different ~~[(more stringent)]~~ standards by any political subdivision ~~[(county or municipality)]~~, the department shall publish ~~[(in the Texas Register)]~~ a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice ~~[(including:~~

~~"[(1) a copy of the proposed changes and additions; and~~

~~"[(2) the time and place that the department will consider any objections to the proposed changes and additions;~~

~~"[(d) After giving the notice required by Subsection (c) of this section, the department shall afford interested persons an opportunity to participate in the standards adoption process through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter].~~

"(e) ~~[(The adoption of requirements and standards shall~~



1 ~~require the approval of and certification by the commissioner.~~

2 "[(f)] Every requirement or standard or modification,  
3 amendment, or repeal of a requirement or standard adopted by the  
4 department shall state the date it shall take effect.

5 ~~"[(g)] Immediately after their promulgation, the department~~  
6 ~~shall publish in the Texas Register all requirements and standards~~  
7 ~~or amendments thereto.~~

8 ~~"[(h)] The standards and requirements adopted or promulgated~~  
9 ~~by the department for the installation of plumbing, heating, and~~  
10 ~~electrical systems in mobile homes, for the body and frame design~~  
11 ~~and construction of mobile homes, and for the installation of~~  
12 ~~mobile homes shall be known as the Texas Mobile Homes Standards~~  
13 ~~Code.]"~~

14 SECTION 5. Section 6, Texas Mobile Homes Standards Act, as  
15 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
16 to read as follows:

17 "Section 6. REGULATIONS. (a) It is unlawful for any  
18 manufacturer to construct ~~[manufacture]~~ mobile homes in this state  
19 for sale or resale unless such manufacturer has supplied the  
20 department with proof of acceptance by a Design Approval Primary  
21 Inspection Agency authorized by the Department of Housing and Urban  
22 Development, has purchased the required labels, and has all mobile  
23 homes manufactured in this state inspected by an accepted In-Plant  
24 Inspection Agency authorized by the Department of Housing and Urban  
25 Development. It is unlawful for a manufacturer to ship mobile  
26 homes into the state for sale or resale unless the manufacturer has

1 complied with all requirements of the National Mobile Home  
2 Construction and Safety Standards Act of 1974 and all standards,  
3 rules, and regulations of the Department of Housing and Urban  
4 Development.

5       "(b) It is unlawful for any manufacturer to construct  
6 modular homes in the state or to ship modular homes into the state  
7 for sale or resale unless constructed to the code and unless the  
8 manufacturer has received approval by the department of the design  
9 and specifications for the construction of its modular homes and of  
10 its quality control program to assure compliance with the  
11 requirements and standards of the Texas Manufactured Housing  
12 Standards Code, has purchased the required decals, and has the  
13 modular homes inspected pursuant to the regulations of the  
14 department [~~No alteration shall be made on any mobile home to which~~  
15 ~~a label has been affixed prior to installation without the prior~~  
16 ~~written approval of the department or which is not in compliance~~  
17 ~~with the rules and regulations of the department)].~~

18       "(c) Before the sale of a manufactured home to a consumer  
19 and before its installation, it is unlawful for any manufacturer,  
20 retailer, broker, or installer to make any alteration on a  
21 manufactured home to which a seal, label, or decal has been affixed  
22 or cause such an alteration to be made, unless prior written  
23 approval has been obtained from the department [~~Each manufacturer~~  
24 ~~and dealer of mobile homes shall establish and maintain such~~  
25 ~~records, make such reports, and provide such information as the~~  
26 ~~commissioner may reasonably require to enable him to determine~~

~~whether such manufacturer or dealer has acted or is acting in compliance with this Act, and shall, upon request of a person duly designated by the commissioner, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer or dealer has acted or is acting in compliance with this Act].~~

"(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal [~~manufacturer to sell any mobile home to a dealer in this state if said dealer has not complied with the bonding or security requirements of this Act].~~

"(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a licensed retailer.

"(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable."

SECTION 6. Section 7, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 7. REGISTRATION. (a) A person may not construct or assemble a manufactured home in the state or ship a manufactured

1 home into the state, unless the person is registered as a  
2 manufactured housing manufacturer by the department and possesses a  
3 valid manufacturer's certificate of registration.

4 "(b) A person may not sell, exchange, lease-purchase, or  
5 offer to sell, exchange, or lease-purchase two or more manufactured  
6 homes to consumers in the state in any consecutive 12-month period,  
7 unless the person possesses a valid manufactured housing retailer's  
8 certificate of registration.

9 "(c) A person may not offer to negotiate or negotiate for  
10 others a bargain or contract for the sale, exchange, or  
11 lease-purchase of two or more manufactured homes to consumers in  
12 the state in any 12-month period, unless the person possesses a  
13 valid manufactured housing broker's certificate of registration.

14 "(d) A person may not perform any installation functions on  
15 manufactured housing in the state, unless the person possesses a  
16 valid installer's certificate of registration.

17 "(e) Each applicant for a certificate of registration as a  
18 manufacturer, retailer, broker, or installer must file with the  
19 department an application for registration containing the following  
20 information:

21 "(1) the legal name, address, and telephone number of the  
22 applicant;

23 "(2) the trade name by which the applicant does business  
24 and, if incorporated, the name registered with the secretary of  
25 state and the address of the business; and

26 "(3) the dates on which the applicant became the owner and

1 operator of the business.

2 "(f) Each application for a certificate of registration must  
3 be accompanied by proof of the security required by this Act and  
4 payment of the required fee for the issuance of the certificate.

5 "(g) All certificates of registration are valid for one year  
6 from the date of issue and are renewable annually on payment of the  
7 annual fee; provided, however, that the initial certificates of  
8 registration issued to registrants as of September 1, 1979, may be  
9 issued for periods of less than one year and the annual fee shall  
10 be prorated proportionally.

11 "(h) The department by rule may adopt a system under which  
12 the licenses issued under this article expire on various dates  
13 during the year. For the year in which the expiration date is  
14 changed, license fees payable on the date of issuance shall be  
15 prorated on a monthly basis so that each licensee shall pay only  
16 that portion of the license fee that is applicable to the number of  
17 months during which the license is valid. On renewal of the  
18 license on the new expiration date, the total license fee is  
19 pavable.

20 "(i) If a change occurs in the information filed with the  
21 department under Subsection (e) of this section, the applicant  
22 shall file an amendment to his or her application that states the  
23 correct information.

24 "(j) While acting as an agent for a registrant, an employee  
25 is covered by the business entity's certificate of registration and  
26 is not required to be individually registered. An independent

1 contractor or business entity may not operate under the certificate  
2 of registration of another business entity.

3 "(k) The commissioner, after notice and hearing, may revoke  
4 or suspend for a definite period of time and for a particular  
5 geographic area any certificate of registration issued under this  
6 Act if the commissioner finds that the registrant:

7 "(1) knowingly and willfully violated any provision of this  
8 Act or any rule or regulation made pursuant to this Act after  
9 receipt of actual notice of any failure to comply;

10 "(2) without lawful authorization retained or converted any  
11 money, property, or any other thing of value from consumers in the  
12 form of down payments, sales and use taxes, deposits, or insurance  
13 premiums;

14 "(3) failed to deliver proper title documents or  
15 certificates of title to consumers;

16 "(4) failed to give or breached any manufactured home  
17 warranty required by this Act or by the Federal Trade Commission;

18 "(5) engaged in any false, misleading, or deceptive acts or  
19 practices as the term is set forth in and as those acts are  
20 declared unlawful by the provisions of Chapter 17, Subchapter E,  
21 Business & Commerce Code; or

22 "(6) failed to furnish or file any reports required by the  
23 department for the administration and enforcement of this Act.

24 "(l) The commissioner shall conduct any hearing involving  
25 the revocation or suspension of a certificate of registration in  
26 accordance with the Administrative Procedure and Texas Register

1 Act, as amended (Article 6252-13a, Vernon's Texas Civil  
2 Statutes). ~~[DEALERS. It is unlawful for any dealer to sell or~~  
3 ~~offer for sale to dealers or to the consumers of this state any~~  
4 ~~mobile home manufactured after the adoption or promulgation of the~~  
5 ~~code unless said mobile home complies with the code and bears a~~  
6 ~~label.]"~~

7 SECTION 7. Section 8, Texas Mobile Homes Standards Act, as  
8 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
9 to read as follows:

10 "Section 8. USED MOBILE HOMES. A retailer or broker may not  
11 sell, exchange, or lease-purchase or negotiate for the sale,  
12 exchange, or lease-purchase of a used mobile home manufactured  
13 after December 12, 1969, unless an appropriate seal or label is  
14 affixed to it. If the used mobile home does not have a seal or  
15 label, the retailer or broker must apply to the department for a  
16 seal with an affidavit that the manufactured home is  
17 habitable. ~~[SEAL OF APPROVAL. Any dealer who has acquired a used~~  
18 ~~mobile home without a seal or label shall apply to the department~~  
19 ~~for a seal. The application for a seal shall include an affidavit~~  
20 ~~stating that the unit has been brought up to or meets code~~  
21 ~~requirements in effect at the time the mobile home was~~  
22 ~~manufactured.]"~~

23 SECTION 8. Subsection (b), Section 9, Texas Mobile Homes  
24 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
25 Statutes), is amended to read as follows:

26 "(b) The department shall adopt rules and regulations,

1 promulgate administrative orders, and take all action necessary to  
 2 assure compliance with the intent and purpose of this Act to  
 3 effectuate and to provide for uniform enforcement of all provisions  
 4 of this Act and of the Texas Manufactured Housing Standards Code.  
 5 The department shall make and enforce rules and regulations  
 6 reasonably required to effectuate ~~[all provisions of this Act and]~~  
 7 the notification and correction procedures provided in Section 615  
 8 of the National Mobile Home Construction and Safety Standards Act  
 9 of 1974."

10 SECTION 9. Subsection (h), Section 9, Texas Mobile Homes  
 11 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
 12 Statutes), is amended to read as follows:

13 "(h) The department through its authorized representatives  
 14 is authorized to enter at reasonable times and without advance  
 15 notice any factory, warehouse, ~~[or]~~ establishment, or location of a  
 16 registrant to make any inspections that are reasonably required to  
 17 determine whether a registrant is in compliance with this Act and  
 18 the rules, regulations, and administrative orders promulgated under  
 19 this Act ~~[in which mobile homes are manufactured, stored, or held~~  
 20 ~~for sale]."~~

21 SECTION 10. Subsection (j), Section 9, Texas Mobile Homes  
 22 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
 23 Statutes), is amended to read as follows:

24 "(j) The department may employ state inspectors to carry out  
 25 the functions required of the department pursuant to this Act, to  
 26 effectuate the provisions of this Act, and to enforce the rules,



1 regulations, and administrative orders promulgated pursuant to this  
2 Act. The department may authorize state inspectors to travel  
3 inside or outside of the state to inspect manufacturing facilities  
4 in connection with the enforcement of this Act [~~The department may~~  
5 ~~establish and required such training programs in the concept,~~  
6 ~~techniques, and inspection of mobile homes for the personnel of~~  
7 ~~local governments as the department considers necessary]."~~

8 SECTION 11. Subsection (k), Section 9, Texas Mobile Homes  
9 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
10 Statutes), is amended to read as follows:

11 "(k) The department may contract with any federal agency or  
12 any agency or political subdivision of any state for the  
13 performance of any inspections or inspection programs pursuant to  
14 this Act or the rules and regulations of the department to assure  
15 that manufactured homes sold or installed in the state comply with  
16 the Texas Manufactured Housing Standards Code [~~The department may,~~  
17 ~~at its discretion, accept in plant inspection reports by a~~  
18 ~~recognized body or agency having follow up in plant inspection~~  
19 ~~service certifying that the mobile homes comply with the code]."~~

20 SECTION 12. Section 9, Texas Mobile Homes Standards Act, as  
21 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
22 by adding Subsections (l) and (m) to read as follows:

23 "(l) The department may enter into contracts with the  
24 Department of Housing and Urban Development or its designees to  
25 monitor the Department of Housing and Urban Development programs.

26 "(m) When necessary or required by law, the department may

1 obtain inspection search warrants."

2 SECTION 13. Section 11, Texas Mobile Homes Standards Act, as  
3 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
4 to read as follows:

5 "Section 11. FEES. (a) There shall be a fee of \$15 for the  
6 inspection of the installation of mobile homes which shall be paid  
7 by the installer of the mobile home ~~[dealer or manufacturer who~~  
8 ~~sold the mobile home to the consumer]~~. Said fee shall be paid to  
9 the state ~~[, This fee shall be paid within 30 days]~~ and shall  
10 accompany notification to the department of the exact location of  
11 the mobile home. The department shall make fee distributions to  
12 local governmental subdivisions performing inspections pursuant to  
13 contracts or other official designations.

14 "(b) Looking for guidance to the rules and regulations  
15 promulgated under Title VI of the Housing and Community Development  
16 Act of 1974 and to that Act itself, the commissioner shall set fees  
17 for the following functions:

18 "(1) There shall be a schedule of fees for the review of  
19 mobile home blueprints and supporting data when the department acts  
20 as a Design Approval Primary Inspection Agency. This fee shall be  
21 paid by the manufacturer seeking approval.

22 "(2) There shall be an inspection fee on all mobile homes  
23 manufactured or assembled within the State of Texas. This fee  
24 shall be paid by the manufacturer of the home. The manufacturer  
25 shall also be charged for the actual cost of travel for  
26 representatives of the department to and from the manufacturing

1 facility.

2       "(3) The fees in Subsections (1) and (2) shall not be  
3 applicable when an accepted inspection agency authorized by the  
4 Department of Housing and Urban Development, other than the  
5 department, acts as the Design Approval Primary Inspection Agency  
6 or the In-Plant Inspection Agency.

7       \*(4) There shall be a fee for inspection of ~~[new or]~~ used  
8 mobile homes at retailer ~~[dealer]~~ locations to check compliance  
9 with the code and to determine if the mobile home has been damaged  
10 in transit. This fee shall be paid by the retailer ~~[dealer]~~ in  
11 possession of the mobile homes at the time the inspection was made.  
12 For any given mobile home at a retailer ~~[dealer]~~ location, this fee  
13 may not be assessed more than one time.

14       "(5) There shall be a fee charged on an hourly basis for  
15 inspection of alterations made upon the structure, plumbing,  
16 heating, or electrical systems of mobile homes. This fee shall be  
17 paid by the person ~~[dealer]~~ making the alteration. The person  
18 ~~[dealer]~~ shall also be charged for the actual cost of travel for  
19 representatives of the department to and from the place of  
20 inspection ~~[dealership making the alteration]~~.

21       "(6) There shall be a fee for the issuance of seals for used  
22 mobile homes which shall be paid by the retailer or broker  
23 ~~[dealer]~~.

24       "(c) The installer of a modular home shall pay to the state  
25 a fee set by the commissioner for the inspection of the  
26 installation of the modular home. Before installation the

1 installer shall notify the department of the exact location of the  
 2 modular home and shall pay the fee [Fees assessed under this Act  
 3 shall be paid to the State Treasury and placed in the General  
 4 Revenue Fund except as otherwise provided in Subsection (a) of this  
 5 section. In addition, the reimbursements for travel expenses  
 6 provided in Parts (2) and (4), Subsection (b) of this section, are  
 7 hereby reappropriated to the department for use in its mobile home  
 8 program].

9 "(d) Following a hearing pursuant to the Administrative  
 10 Procedure and Texas Register Act, as amended (Article 6252-13a,  
 11 Vernon's Texas Civil Statutes), the commissioner shall set fees for  
 12 the following functions:

13 "(1) a fee paid by the manufacturer for the review of  
 14 modular home designs, blueprints, and specifications:

15 "(2) an inspection fee paid by the manufacturer for all  
 16 modular homes manufactured in the state and for all modular homes  
 17 manufactured outside of the state to be transported to retailers or  
 18 consumers in the state:

19 "(3) a fee charged on an hourly basis and paid by the person  
 20 making the alteration for an inspection of the alterations made on  
 21 a modular home after construction and certification by the  
 22 manufacturer and before the closing of a sale to the consumer:

23 "(4) annual fees for the issuance and renewal of  
 24 manufacturers', retailers', brokers', and installers' certificates  
 25 of registration: and

26 "(5) a fee for the issuance of decals that shall be paid by

1 the manufacturer.

2 "(e) The person required to pay an inspection fee set in  
3 accordance with Subsection (d) of this section shall pay the cost  
4 of travel to and from the place of the inspection for  
5 representatives of the department who make the inspection.

6 "(f) All fees assessed under this Act shall be paid to the  
7 State Treasurer and placed in the General Revenue Fund.

8 "(g) The [existing] fees charged by the department in effect  
9 August 31, 1979, shall remain in effect [upon the effective date of  
10 this Act and] until the new schedule of fees set forth in  
11 [Subsection (b) of] this section has been promulgated and adopted."

12 SECTION 14. Section 13, Texas Mobile Homes Standards Act, as  
13 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
14 to read as follows:

15 "Section 13. SECURITY REQUIRED. (a) The department may not  
16 issue a certificate of registration, unless the applicant first  
17 files [As of the effective date of this Act, manufacturers,  
18 dealers, and salespersons are required to file either] a surety  
19 [performance] bond, a cash deposit, or other security in such form  
20 as the commissioner may prescribe and a written irrevocable  
21 designation of the commissioner as agent for service of legal  
22 process [along with such information as the commissioner may deem  
23 necessary to insure compliance with the intent of this Act].

24 "(b) If a surety [performance] bond is filed, it shall be  
25 continuous and remain in effect until cancelled by the surety  
26 company with notice as provided by this Act. A cash deposit or

1 other security need not be posted annually so long as the  
 2 applicable amount specified in ~~[Subsection (i) of]~~ this section  
 3 remains posted. If a claim is made against a cash deposit causing  
 4 the deposit to be lessened, the depositor has 20 calendar days in  
 5 which to deposit additional money or other security so that  
 6 compliance may be had with the requirements of ~~[Subsection (i) of]~~  
 7 this section. If the deficit is not eliminated within 20 days, ~~the~~  
 8 certificate of registration of the inadequately covered  
 9 manufacturer, retailer, broker, or installer is immediately  
 10 suspended. If a bond is cancelled, the certificate of registration  
 11 is immediately suspended [any subsequent contract between a  
 12 consumer and the inadequately covered dealer, manufacturer, or  
 13 salesperson is voidable at the option of the consumer].

14 ~~"[(c)] At the time a consumer enters into a contract, if a~~  
 15 ~~manufacturer, dealer, or salesperson has neither posted a cash~~  
 16 ~~deposit or other security, nor filed a performance bond, the~~  
 17 ~~contract between a consumer and that manufacturer, dealer, or~~  
 18 ~~salesperson is voidable at the option of the consumer.]~~

19 "[c] ~~[(c)]~~ If a cash deposit or other security is posted,  
 20 the interest from said deposit shall go to the depositor.

21 "[d] ~~[(c)]~~ The bond shall be a surety bond issued by a  
 22 company authorized to do business in this state and shall be in  
 23 conformity with the Insurance Code. The cash deposit or other  
 24 security shall be in such a form as the commissioner may deem  
 25 appropriate ~~[to insure compliance with the intent of this Act].~~

26 "[e] ~~[(c)]~~ The bond, cash deposit, or other security shall

be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment [~~establishes liability~~] against a manufacturer, retailer, broker, installer [~~dealer~~] or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, [~~or~~] lease-purchase, exchange, brokerage, or installation of a manufactured [~~mobile~~] home, including but not limited to

"(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

"(2) failure to deliver proper title documents or certificates of title to consumers;

"(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission;  
or

"(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the

1 cash deposit or other security posted under this section be liable  
 2 for an amount in excess of actual damages, restitution, or  
 3 expenses, including reasonable attorney's fees. Any judgment  
 4 obtained against a principal is conclusive against the surety or  
 5 other security if notice of the filing of suit is given as required  
 6 by this section. The bond or other security shall be open to  
 7 successive claims up to the amount of face value of the bond or  
 8 other required security. The surety shall not be liable for  
 9 successive claims in excess of the bond amount, regardless of the  
 10 number of years the bond remains in force.

11 "(f) ~~(g)~~ A consumer shall inform the manufacturer,  
 12 retailer, installer, ~~dealer~~ or salesperson, and the department of  
 13 any claim against the bond or security no later than two years  
 14 after the purchase of the mobile home. Whenever the department  
 15 receives notice of a claim against a bond, the department shall  
 16 promptly notify the bonding company involved. If the consumer  
 17 claim results in a private lawsuit being filed by the consumer, the  
 18 consumer shall notify the attorney general's office and the surety  
 19 company by certified mail of the filing of the lawsuit. At the  
 20 time of sale or delivery of a manufactured ~~[mobile]~~ home to a  
 21 consumer, the consumer must be given conspicuous written  
 22 notification of this two-year limit and the notice requirements.

23 "(g) ~~(h)~~ Any manufacturer, retailer, broker, or installer  
 24 ~~or dealer~~ who maintains a place of business at one or more  
 25 locations shall file with the department a separate bond or other  
 26 security for each location. A manufactured home installed on a



permanent foundation system and offered for sale as real estate is not a business location that requires a bond.

"(h) [(i)] A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A retailer ~~[dealer]~~ shall be bonded, supply a cash deposit, or other security in the amount of \$25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$15,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

"(i) [(j)] The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ~~[manufacturer or dealer]~~ ceases ~~[the]~~ business as a manufacturer, retailer, broker, or installer or salesperson or at ~~[of manufacturing or selling mobile homes or]~~ such time as the department may determine that no claims exist against the cash deposit or security.

~~"[(k)] Brokers shall be considered to be dealers. Brokers shall not be considered to be dealers if they possess a valid real estate broker or salesperson license as required by The Real Estate License Act (Article 6573(a), Vernon's Texas Civil Statutes). In~~

~~order for a licensed real estate broker or salesperson to qualify for this exemption he or she may only sell used mobile homes installed on and a part of the sale of real property.]"~~

SECTION 15. Section 14, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 14. WARRANTIES. (a) After the effective date of this Act, all new manufactured [~~mobile~~] homes sold [~~by a manufacturer or dealer~~] to consumers in the state shall be covered by the manufactured [~~mobile~~] home warranty set forth in this section [~~Act~~].

"(b) The manufactured [~~mobile~~] home warranty provided for in this Act is given by [~~shall apply to~~] the manufacturer of the manufactured [~~mobile~~] home [~~as well as to the dealer who sells the mobile home to the buyer, except as otherwise provided~~].

"(c) The manufactured [~~mobile~~] home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer [~~dealer~~] at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

"(1) that the manufactured [~~mobile~~] home complies with the code;

"(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later [~~set up~~];

"(3) that the manufactured [~~mobile~~] home and all appliances

1 and other equipment installed and included therein by the  
2 manufacturer or retailer [~~dealer~~] are free from defects in  
3 materials or workmanship;

4 "(4) that the manufactured home is installed in accordance  
5 with all standards, rules, regulations, administrative orders, and  
6 requirements of the department [~~that installation functions~~  
7 ~~performed on the mobile home are performed in compliance with this~~  
8 ~~Act, and other applicable state requirements, provided that such~~  
9 ~~installation operations shall not be performed by any person other~~  
10 ~~than a dealer, manufacturer, or their duly authorized agents];~~

11 "(5) that the manufacturer or the retailer [~~dealer~~] or both  
12 shall take appropriate corrective action within a reasonable period  
13 of time in instances of defects in materials or workmanship, or  
14 failures to comply with the code;

15 "(6) [~~that the manufacturer and dealer shall be jointly and~~  
16 ~~severally liable to the consumer for the fulfillment of the terms~~  
17 ~~of the mobile home warranty, except as provided in Part (4),~~  
18 ~~Subsection (c) of this section, and that the consumer may notify~~  
19 ~~either one or both of the need for appropriate corrective action in~~  
20 ~~instances of defects of workmanship, or failures to comply with the~~  
21 ~~code;~~

22 "[~~47~~] that the warranty contains the address of the  
23 retailer [~~dealer~~] and manufacturer where notices of defects may be  
24 given; and

25 "(7) that the purchaser shall notify either the manufacturer  
26 or the retailer or both in writing of the need for appropriate

1 corrective action in instances of defects in materials or  
2 workmanship or in failures to comply with the code.

3 "(d) The manufacturer and retailer are jointly and severally  
4 liable to the consumer for the fulfillment of the manufactured home  
5 warranty.

6 "(e) For all installations not covered by the warranty as  
7 set forth in Subsection (c) of this section, the installer shall  
8 give each manufactured home owner a written warranty that the  
9 installation of the home was done in accordance with all standards,  
10 requirements, rules, regulations, and administrative orders of the  
11 department."

12 SECTION 16. Section 17, Texas Mobile Homes Standards Act, as  
13 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
14 to read as follows:

15 "Section 17. PENALTIES. (a) A person, individual, or  
16 director, officer, or agent of a corporation who knowingly and  
17 willfully violates a provision of this Act or any rule, ~~or~~  
18 regulation, or administrative order of the department in a manner  
19 that threatens the health or safety of any purchaser or consumer  
20 commits a misdemeanor and on conviction shall be fined not more  
21 than \$1,000 or shall be confined in the county jail not longer than  
22 one year or both ~~[commits a Class A misdemeanor]~~.

23 "(b) Any person ~~[dealer, manufacturer, or salesperson]~~ who  
24 violates any provision of this Act or the rules and regulations of  
25 the department may be assessed a civil penalty to be paid to the  
26 State of Texas in an amount not to exceed \$1,000 for each such

violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

"(c) Whenever it appears that any person [~~dealer, manufacturer, or salesperson~~] has violated or is threatening to violate any of the provisions of this Act or of the rules, ~~and~~ regulations, and administrative orders of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person [~~such dealer, manufacturer, or salesperson~~] from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

"(d) Failure by a manufacturer or retailer [~~dealer~~] to comply with the warranty provisions [~~in Section 14~~] of this Act or any implied warranties or the violation of any provision of this Act by any person [~~the code provisions in Section 4 of this Act~~] is [~~considered~~] a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of [~~with~~] the remedies in this Act."

SECTION 17. Section 18, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

1           "Section 18. MISCELLANEOUS PROVISIONS. (a) Any waiver by a  
2 consumer of the provisions of this Act is contrary to public policy  
3 and is unenforceable and void.

4           "(b) No provision of this Act shall exclude any other remedy  
5 available at law or equity to the consumer.

6           "(c) If any provision of this Act or the application thereof  
7 to any person or circumstances is held invalid, such invalidity  
8 shall not affect other provisions or applications of this Act which  
9 can be given effect without the invalid provision or application,  
10 and to this end the provisions of this Act are declared to be  
11 severable.

12           "(d) If a retailer, broker, or installer does not possess a  
13 valid certificate of registration at the time of entering into any  
14 contract with a consumer, the contract between the consumer and the  
15 retailer, broker, or installer is voidable at the option of the  
16 consumer.

17           "(e) Nothing in this Act shall be construed to modify or  
18 amend any provisions of The Real Estate License Act (Article 6573a,  
19 Vernon's Texas Civil Statutes).

20           "(f) Notwithstanding any provisions of any other statute,  
21 regulation, or ordinance to the contrary, an installer is not  
22 required to secure any permit, certificate, or license or pay any  
23 fee for the transportation of manufactured housing to the place  
24 where it is to be installed except as required by the department or  
25 the State Department of Highways and Public Transportation. The  
26 State Department of Highways and Public Transportation shall

1 cooperate with the department in the routing of the transportation  
2 of housing and shall not issue any permits for the transportation  
3 of manufactured housing except to persons holding valid  
4 certificates of registration issued by the department."

5 SECTION 18. Chapter 18, Code of Criminal Procedure, 1965, as  
6 amended, is amended by adding Article 18.051 to read as follows:

7 "Article 18.051. WARRANTS FOR REPRESENTATIVES OF THE TEXAS  
8 DEPARTMENT OF LABOR AND STANDARDS. (a) A search warrant may be  
9 issued to a representative of the Texas Department of Labor and  
10 Standards for the purpose of allowing inspection of any specified  
11 premises to determine the presence of a violation of the Texas  
12 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas  
13 Civil Statutes) or the Texas Manufactured Housing Standards Code.

14 "(b) A magistrate may not issue a search warrant under this  
15 article unless there is a presentation of evidence of probable  
16 cause to believe that a violation is present in the premises sought  
17 to be inspected.

18 "(c) In determining probable cause, the magistrate is not  
19 limited to evidence of specific knowledge and may consider any of  
20 the following:

21 "(1) previous deviations, defects, or violations found  
22 present in the premises;

23 "(2) the type of premises;

24 "(3) the purpose for which the premises are used; and

25 "(4) the presence of code deviations or defects or  
26 violations in and the general condition of premises near the

1 premises sought to be inspected."

2       SECTION 19.   Sections 5, 10, and 15, Texas Mobile Homes  
3 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
4 Statutes), are repealed.

5       SECTION 20.   This Act takes effect September 1, 1979. The  
6 standards and requirements for the construction and installation of  
7 modular homes established by this Act are effective January 1,  
8 1980.

9       SECTION 21.   The importance of this legislation and the  
10 crowded condition of the calendars in both houses create an  
11 emergency and an imperative public necessity that the  
12 constitutional rule requiring bills to be read on three several  
13 days in each house be suspended, and this rule is hereby suspended.



# HOUSE COMMITTEE REPORT

1st. Printing

By: Doggett, Parker  
(Semos)

S.B. No. 636

A BILL TO BE ENTITLED

AN ACT

amending and revising the Texas Mobile Home Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), to be known as the Texas Manufactured Housing Standards Act; providing for regulation of the construction, sale, transportation, and installation of manufactured housing and setting forth such regulation; and providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. SHORT TITLE. This Act may be cited as the Texas Manufactured Housing [~~Mobile Homes~~] Standards Act."

SECTION 2. Section 2, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. PURPOSE. The legislature finds that there is a growing need to provide the citizens of the state with safe, affordable, and well-constructed housing. The legislature finds that manufactured housing has become a primary housing source of many of the state's citizens. It is the specific intent of the legislature to encourage the construction of housing for the state's citizens and to improve the general welfare and safety of purchasers of manufactured housing in this state. The legislature finds that existing statutes and regulations are not adequate to

1 provide for the full protection of the consumer and to prevent  
2 certain discriminations that exist in the state with regard to  
3 manufactured housing. The legislature finds that it is the  
4 responsibility of the state to provide for the protection of its  
5 citizens who desire to purchase housing by imposing certain  
6 regulations on the construction and installation, to provide  
7 economic stability of manufactured housing manufacturers,  
8 retailers, installers, and brokers, and to provide fair and  
9 effective consumer remedies ~~[it is the legislature's intent to~~  
10 ~~improve the general welfare and safety of the citizens of this~~  
11 ~~state. The legislature finds that mobile homes have become a~~  
12 ~~primary housing resource of many of the citizens of the state, that~~  
13 ~~a growing awareness exists that many consumers are injured by~~  
14 ~~unprincipled and dishonest members of the mobile home industry,~~  
15 ~~that current warranties are deficient, that existing means of~~  
16 ~~remedying these injustices are inadequate and do not provide a~~  
17 ~~viable means for protecting the consumer, and that it is the~~  
18 ~~responsibility of the state to provide for the protection of its~~  
19 ~~citizens through the imposition of certain regulations on the~~  
20 ~~mobile home industry].~~ In recognition of these findings, the  
21 legislature deems it necessary to expand various regulatory powers  
22 to deal with these problems. The legislature finds this to be the  
23 most economical and efficient means of dealing with this problem  
24 and serving the public interest. Accordingly, this Act shall be  
25 liberally construed and applied to promote its underlying policies  
26 and purposes."

SECTION 3. Section 3, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. DEFINITIONS. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

"(a) 'Mobile home' means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

"(b) 'Retailer' [~~Dealer~~] means any person [~~other than a manufacturer~~] engaged in the business of buying for resale, selling, or exchanging manufactured [~~mobile~~] homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer [~~dealer~~] unless engaged in the sale, exchange, or lease-purchase of two [~~three~~] or more manufactured [~~mobile~~] homes to consumers in any consecutive 12-month period.

"(c) 'Manufacturer' means any person who constructs [~~manufactures~~] or assembles manufactured housing for sale, exchange, or lease-purchase within the state [~~mobile homes and sells them to dealers or consumers~~].

"(d) 'Department' means the Texas Department of Labor and Standards.

1           "(e) 'Person' means an individual, partnership, company,  
2 corporation, association, or other group, however organized.

3           "(f) 'Broker' means a person engaged by others to negotiate  
4 or offer to negotiate bargains or contracts for the sale, exchange,  
5 or lease-purchase of their manufactured [mobile] homes at the site  
6 where installed to consumers. A broker may or may not be an agent  
7 of any party involved in the transaction. No person shall be  
8 considered a broker unless engaged in brokerage activities related  
9 to the sale, exchange, or lease-purchase of two [three] or more  
10 manufactured [mobile] homes to consumers in any consecutive  
11 12-month period.

12           "(g) 'Consumer' means any person who seeks or acquires by  
13 purchase, exchange, or lease-purchase a manufactured [mobile] home  
14 ~~from a manufacturer, dealer, or broker~~.

15           "(h) 'Decal' means a device or insignia issued by the  
16 department that is permanently affixed to each transportable  
17 section of each modular home to indicate compliance with the  
18 standards, rules, and regulations established by the department  
19 ~~['Salesperson' means any person who for any form of compensation~~  
20 ~~sells or lease-purchases or offers to sell or lease-purchase mobile~~  
21 ~~homes to consumers as an employee or agent of a dealer].~~

22           "(i) 'Seal' means a device or insignia issued by the  
23 department to be affixed to used mobile homes to indicate  
24 compliance with the standards, rules, and regulations established  
25 by the department. The seal shall remain the property of the  
26 department.

1           "(j) 'Label' means a device or insignia issued by the  
2 department to indicate compliance with the standards, rules, and  
3 regulations established by the Department of Housing and Urban  
4 Development, and is permanently affixed to each transportable  
5 section of each mobile home manufactured after June 15, 1976, for  
6 sale to a consumer.

7           "(k) 'Installation,' when used in reference to manufactured  
8 housing [~~a mobile home and when required by this Act~~], means the  
9 transporting of manufactured homes to the place where they will be  
10 used by the consumer, the construction of the foundation system,  
11 whether temporary or permanent, and the placement of a manufactured  
12 home on the foundation system, and includes supporting, blocking,  
13 leveling, securing, anchoring, and proper connection of multiple or  
14 expandable units and minor adjustments.

15           "(l) 'Installer' means any person, including a retailer  
16 [~~mobile home dealer~~] or manufacturer, who performs installation  
17 functions on manufactured housing [~~mobile homes~~].

18           "(m) 'Alteration' means the replacement, addition, and  
19 modification, or removal of any equipment or its installation after  
20 sale by a manufacturer to a retailer [~~dealer~~] but prior to sale and  
21 installation by a retailer [~~dealer~~] to a purchaser which may affect  
22 the construction, fire safety, occupancy, plumbing, heat-producing  
23 or electrical system. It includes any modification made in the  
24 manufactured [~~mobile~~] home which may affect the compliance of the  
25 home with the standards, but it does not include the repair or  
26 replacement of a component or appliance requiring plug-in to an

1 electrical receptacle where the replaced item is of the same  
2 configuration and rating as the one being replaced. It also does  
3 not include the addition of an appliance requiring 'plug-in' to an  
4 electrical receptacle, which appliance was not provided with the  
5 manufactured [~~mobile~~] home by the manufacturer, if the rating of  
6 the appliance does not exceed the rating of the receptacle to which  
7 it is connected.

8 "(n) 'Lease-purchase' means to enter into a lease contract  
9 with a provision conferring on the lessee an option to purchase the  
10 manufactured [~~mobile~~] home.

11 "(o) 'Commissioner' means the Commissioner of the Texas  
12 Department of Labor and Standards.

13 "(p) 'Code' means the Texas Manufactured Housing [~~Mobile~~  
14 ~~Homes~~] Standards Code.

15 "(q) 'Modular home' means a structure or building module  
16 that is manufactured at a location other than the location where it  
17 is installed and used as a residence by a consumer, transportable  
18 in one or more sections on a temporary chassis or other conveyance  
19 device, and designed to be used as a permanent dwelling when  
20 installed and placed upon a permanent foundation system. The term  
21 includes the plumbing, heating, air-conditioning, and electrical  
22 systems contained in the structure. The term does not include a  
23 mobile home as defined in this Act.

24 "(r) 'Salesperson' means any person who for any form of  
25 compensation sells or lease-purchases or offers to sell or  
26 lease-purchase manufactured housing to consumers as an employee or

1 agent of a retailer or broker.

2 "(s) 'Manufactured housing' or 'manufactured home' means a  
3 mobile home or a modular home or both.

4 "(t) 'Registrant' means any person who has registered with  
5 the department and has been issued a certificate of registration as  
6 a manufactured housing manufacturer, retailer, broker, or  
7 installer."

8 SECTION 4. Section 4, Texas Mobile Homes Standards Act, as  
9 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
10 to read as follows:

11 "Section 4. MANUFACTURED HOUSING [~~MOBILE HOMES~~] STANDARDS.

12 (a) The department shall [~~may~~] adopt standards and requirements  
13 for the installation [~~of plumbing, heating, and electrical systems~~]  
14 and for the construction of manufactured housing, that [~~mobile~~  
15 ~~homes as it determines~~] are reasonably necessary in order to  
16 protect the health, [~~and~~] safety, and welfare of the occupants and  
17 the public. The collection of these standards and requirements is  
18 the Texas Manufactured Housing Code.

19 "~~(1) [Said standards and requirements shall be reasonably~~  
20 ~~consistent with the fundamental principles adopted or issued as~~  
21 ~~ANSI Standard A119.1 and as amended from time to time by the~~  
22 ~~American National Standards Institute (ANSI) applicable to mobile~~  
23 ~~homes.~~

24 "~~[(2) It is unlawful for any person to sell or offer for~~  
25 ~~sale within this state any mobile home that does not meet the~~  
26 ~~standards and requirements adopted by the department pursuant to~~

~~this Act.~~

"~~(1)~~ The requirements and ~~[existing]~~ standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, ~~[shall]~~ remain in full force and effect ~~[upon the effective date of this Act, and]~~ until amended in accordance with the procedure set forth in this section.

"(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.

"(3) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

"(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of minimum hurricane-force velocity and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity.  
~~[The department may adopt such minimum standards as it deems necessary for the installation of mobile homes except those in the~~



~~inventories of manufacturers and dealers within this state so that such mobile homes shall withstand winds of minimum hurricane force velocity within the first two tiers of coastal counties within this state and which shall withstand winds of minimum gale force velocity in all other counties. Compliance with such installation standards shall be the responsibility of the dealer or manufacturer (when the manufacturer sells mobile homes directly to consumers).]~~

"(1) The requirements and standards for the installation of mobile homes as adopted by the department in existence on August 31, 1979, remain in force until amended in accordance with the procedure set forth in this section ~~[counties and municipalities may, with the approval of the department, adopt more stringent standards when necessary for the public health and safety].~~

"(2) All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the department ~~[No mobile home purchased or lease purchased after the effective date of this Act shall be situated or located within 300 feet of any other mobile home, residence, or building, except those in the inventories of manufacturers and dealers within this state, unless such mobile home is installed in accordance with such minimum standards].~~

"(3) The department may cooperate with all units of local government within this state in the establishment of inspection training programs and, when requested, may authorize local units of government to make and perform inspection and enforcement activities related to the installation of manufactured housing

1 ~~[mobile homes]~~ pursuant to contracts or other official designations  
2 and the rules and regulations of the department.

3 " (c) A political subdivision of this state, without the  
4 express approval of the department following a hearing on the  
5 matter, may not adopt different standards from those promulgated by  
6 the department for the construction or installation of manufactured  
7 housing within the political subdivision.

8 " (d) Before ~~[(at least 30 days before)]~~ the adoption or  
9 promulgation of any standards or requirements authorized by this  
10 section, any change in or addition to the standards authorized in  
11 this section, or ~~[(for)]~~ the approval of different ~~[(more stringent)]~~  
12 standards by any political subdivision (county or municipality),  
13 the department shall publish ~~[(in the Texas Register)]~~ a notice and  
14 conduct a public hearing in accordance with the Administrative  
15 Procedure and Texas Register Act, as amended (Article 6252-13a,  
16 Vernon's Texas Civil Statutes), not sooner than the 30th day  
17 following the publication of notice ~~[(including:]~~

18 " ~~[(1) a copy of the proposed changes and additions; and~~

19 " ~~[(2) the time and place that the department will consider~~  
20 ~~any objections to the proposed changes and additions.~~

21 " ~~[(d) After giving the notice required by Subsection (c) of~~  
22 ~~this section, the department shall afford interested persons an~~  
23 ~~opportunity to participate in the standards adoption process~~  
24 ~~through submission of written data, views, or arguments with or~~  
25 ~~without opportunity to present the same orally on any matter].~~

26 " (e) ~~[(The adoption of requirements and standards shall~~

1 ~~require the approval of and certification by the commissioner.~~

2 "[(f)] Every requirement or standard or modification,  
3 amendment, or repeal of a requirement or standard adopted by the  
4 department shall state the date it shall take effect.

5 "~~[(g)] Immediately after their promulgation, the department~~  
6 ~~shall publish in the Texas Register all requirements and standards~~  
7 ~~or amendments thereto.~~

8 "~~[(h)] The standards and requirements adopted or promulgated~~  
9 ~~by the department for the installation of plumbing, heating, and~~  
10 ~~electrical systems in mobile homes, for the body and frame design~~  
11 ~~and construction of mobile homes, and for the installation of~~  
12 ~~mobile homes shall be known as the Texas Mobile Homes Standards~~  
13 ~~Code.]"~~

14 SECTION 5. Section 6, Texas Mobile Homes Standards Act, as  
15 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
16 to read as follows:

17 "Section 6. REGULATIONS. (a) It is unlawful for any  
18 manufacturer to construct ~~[manufacture]~~ mobile homes in this state  
19 for sale or resale unless such manufacturer has supplied the  
20 department with proof of acceptance by a Design Approval Primary  
21 Inspection Agency authorized by the Department of Housing and Urban  
22 Development, has purchased the required labels, and has all mobile  
23 homes manufactured in this state inspected by an accepted In-Plant  
24 Inspection Agency authorized by the Department of Housing and Urban  
25 Development. It is unlawful for a manufacturer to ship mobile  
26 homes into the state for sale or resale unless the manufacturer has

1 complied with all requirements of the National Mobile Home  
 2 Construction and Safety Standards Act of 1974 and all standards,  
 3 rules, and regulations of the Department of Housing and Urban  
 4 Development.

5       "(b) It is unlawful for any manufacturer to construct  
 6 modular homes in the state or to ship modular homes into the state  
 7 for sale or resale unless constructed to the code and unless the  
 8 manufacturer has received approval by the department of the design  
 9 and specifications for the construction of its modular homes and of  
 10 its quality control program to assure compliance with the  
 11 requirements and standards of the Texas Manufactured Housing  
 12 Standards Code, has purchased the required decals, and has the  
 13 modular homes inspected pursuant to the regulations of the  
 14 department ~~[No alteration shall be made on any mobile home to which~~  
 15 ~~a label has been affixed prior to installation without the prior~~  
 16 ~~written approval of the department or which is not in compliance~~  
 17 ~~with the rules and regulations of the department].~~

18       "(c) Before the sale of a manufactured home to a consumer  
 19 and before its installation, it is unlawful for any manufacturer,  
 20 retailer, broker, or installer to make any alteration on a  
 21 manufactured home to which a seal, label, or decal has been affixed  
 22 or cause such an alteration to be made, unless prior written  
 23 approval has been obtained from the department ~~[Each manufacturer~~  
 24 ~~and dealer of mobile homes shall establish and maintain such~~  
 25 ~~records, make such reports, and provide such information as the~~  
 26 ~~commissioner may reasonably require to enable him to determine~~

~~whether such manufacturer or dealer has acted or is acting in compliance with this Act, and shall, upon request of a person duly designated by the commissioner, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer or dealer has acted or is acting in compliance with this Act).~~

"(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal [~~manufacturer to sell any mobile home to a dealer in this state if said dealer has not complied with the bonding or security requirements of this Act).~~

"(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a licensed retailer.

"(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable."

SECTION 6. Section 7, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 7. REGISTRATION. (a) A person may not construct or assemble a manufactured home in the state or ship a manufactured

1 home into the state, unless the person is registered as a  
2 manufactured housing manufacturer by the department and possesses a  
3 valid manufacturer's certificate of registration.

4 "(b) A person may not sell, exchange, lease-purchase, or  
5 offer to sell, exchange, or lease-purchase two or more manufactured  
6 homes to consumers in the state in any consecutive 12-month period,  
7 unless the person possesses a valid manufactured housing retailer's  
8 certificate of registration.

9 "(c) A person may not offer to negotiate or negotiate for  
10 others a bargain or contract for the sale, exchange, or  
11 lease-purchase of two or more manufactured homes to consumers in  
12 the state in any 12-month period, unless the person possesses a  
13 valid manufactured housing broker's certificate of registration.

14 "(d) A person may not perform any installation functions on  
15 manufactured housing in the state, unless the person possesses a  
16 valid installer's certificate of registration.

17 "(e) Each applicant for a certificate of registration as a  
18 manufacturer, retailer, broker, or installer must file with the  
19 department an application for registration containing the following  
20 information:

21 "(1) the legal name, address, and telephone number of the  
22 applicant;

23 "(2) the trade name by which the applicant does business  
24 and, if incorporated, the name registered with the secretary of  
25 state and the address of the business; and

26 "(3) the dates on which the applicant became the owner and

1 operator of the business.

2 "(f) Each application for a certificate of registration must  
3 be accompanied by proof of the security required by this Act and  
4 payment of the required fee for the issuance of the certificate.

5 "(g) All certificates of registration are valid for one year  
6 from the date of issue and are renewable annually on payment of the  
7 annual fee; provided, however, that the initial certificates of  
8 registration issued to registrants as of September 1, 1979, may be  
9 issued for periods of less than one year and the annual fee shall  
10 be prorated proportionally.

11 "(h) The department by rule may adopt a system under which  
12 the licenses issued under this article expire on various dates  
13 during the year. For the year in which the expiration date is  
14 changed, license fees payable on the date of issuance shall be  
15 prorated on a monthly basis so that each licensee shall pay only  
16 that portion of the license fee that is applicable to the number of  
17 months during which the license is valid. On renewal of the  
18 license on the new expiration date, the total license fee is  
19 pavable.

20 "(i) If a change occurs in the information filed with the  
21 department under Subsection (e) of this section, the applicant  
22 shall file an amendment to his or her application that states the  
23 correct information.

24 "(j) While acting as an agent for a registrant, an employee  
25 is covered by the business entity's certificate of registration and  
26 is not required to be individually registered. An independent

1 contractor or business entity may not operate under the certificate  
2 of registration of another business entity.

3 "(k) The commissioner, after notice and hearing, may revoke  
4 or suspend for a definite period of time and for a particular  
5 geographic area any certificate of registration issued under this  
6 Act if the commissioner finds that the registrant:

7 "(1) knowingly and willfully violated any provision of this  
8 Act or any rule or regulation made pursuant to this Act after  
9 receipt of actual notice of any failure to comply;

10 "(2) without lawful authorization retained or converted any  
11 money, property, or any other thing of value from consumers in the  
12 form of down payments, sales and use taxes, deposits, or insurance  
13 premiums;

14 "(3) failed to deliver proper title documents or  
15 certificates of title to consumers;

16 "(4) failed to give or breached any manufactured home  
17 warranty required by this Act or by the Federal Trade Commission;

18 "(5) engaged in any false, misleading, or deceptive acts or  
19 practices as the term is set forth in and as those acts are  
20 declared unlawful by the provisions of Chapter 17, Subchapter E,  
21 Business & Commerce Code; or

22 "(6) failed to furnish or file any reports required by the  
23 department for the administration and enforcement of this Act.

24 "(l) The commissioner shall conduct any hearing involving  
25 the revocation or suspension of a certificate of registration in  
26 accordance with the Administrative Procedure and Texas Register



1 ~~Act, as amended (Article 6252-13a, Vernon's Texas Civil~~  
2 ~~Statutes). [DEALERS, It is unlawful for any dealer to sell or~~  
3 ~~offer for sale to dealers or to the consumers of this state any~~  
4 ~~mobile home manufactured after the adoption or promulgation of the~~  
5 ~~code unless said mobile home complies with the code and bears a~~  
6 ~~label.]"~~

7 SECTION 7. Section 8, Texas Mobile Homes Standards Act, as  
8 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
9 to read as follows:

10 "Section 8. USED MOBILE HOMES. A retailer or broker may not  
11 sell, exchange, or lease-purchase or negotiate for the sale,  
12 exchange, or lease-purchase of a used mobile home manufactured  
13 after December 12, 1969, unless an appropriate seal or label is  
14 affixed to it. If the used mobile home does not have a seal or  
15 label, the retailer or broker must apply to the department for a  
16 seal with an affidavit that the manufactured home is  
17 habitable. [SEAL OF APPROVAL. Any dealer who has acquired a used  
18 mobile home without a seal or label shall apply to the department  
19 for a seal. The application for a seal shall include an affidavit  
20 stating that the unit has been brought up to or meets code  
21 requirements in effect at the time the mobile home was  
22 manufactured.]"

23 SECTION 8. Subsection (b), Section 9, Texas Mobile Homes  
24 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
25 Statutes), is amended to read as follows:

26 "(b) The department shall adopt rules and regulations,

1 promulgate administrative orders, and take all action necessary to  
2 assure compliance with the intent and purpose of this Act to  
3 effectuate and to provide for uniform enforcement of all provisions  
4 of this Act and of the Texas Manufactured Housing Standards Code.  
5 The department shall make and enforce rules and regulations  
6 reasonably required to effectuate ~~[all provisions of this Act and]~~  
7 the notification and correction procedures provided in Section 615  
8 of the National Mobile Home Construction and Safety Standards Act  
9 of 1974."

10 SECTION 9. Subsection (h), Section 9, Texas Mobile Homes  
11 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
12 Statutes), is amended to read as follows:

13 "(h) The department through its authorized representatives  
14 is authorized to enter at reasonable times and without advance  
15 notice any factory, warehouse, ~~[or]~~ establishment, or location of a  
16 registrant to make any inspections that are reasonably required to  
17 determine whether a registrant is in compliance with this Act and  
18 the rules, regulations, and administrative orders promulgated under  
19 this Act ~~[in which mobile homes are manufactured, stored, or held~~  
20 ~~for sale]."~~

21 SECTION 10. Subsection (j), Section 9, Texas Mobile Homes  
22 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
23 Statutes), is amended to read as follows:

24 "(j) The department may employ state inspectors to carry out  
25 the functions required of the department pursuant to this Act, to  
26 effectuate the provisions of this Act, and to enforce the rules,

1 ~~regulations, and administrative orders promulgated pursuant to this~~  
 2 ~~Act. The department may authorize state inspectors to travel~~  
 3 ~~inside or outside of the state to inspect manufacturing facilities~~  
 4 ~~in connection with the enforcement of this Act [The department may~~  
 5 ~~establish and require such training programs in the concept,~~  
 6 ~~techniques, and inspection of mobile homes for the personnel of~~  
 7 ~~local governments as the department considers necessary]."~~

8 SECTION 11. Subsection (k), Section 9, Texas Mobile Homes  
 9 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
 10 Statutes), is amended to read as follows:

11 "(k) ~~The department may contract with any federal agency or~~  
 12 ~~any agency or political subdivision of any state for the~~  
 13 ~~performance of any inspections or inspection programs pursuant to~~  
 14 ~~this Act or the rules and regulations of the department to assure~~  
 15 ~~that manufactured homes sold or installed in the state comply with~~  
 16 ~~the Texas Manufactured Housing Standards Code [The department may,~~  
 17 ~~at its discretion, accept in-plant inspection reports by a~~  
 18 ~~recognized body or agency having follow up in-plant inspection~~  
 19 ~~service certifying that the mobile homes comply with the code]."~~

20 SECTION 12. Section 9, Texas Mobile Homes Standards Act, as  
 21 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
 22 by adding Subsections (l) and (m) to read as follows:

23 "(l) ~~The department may enter into contracts with the~~  
 24 ~~Department of Housing and Urban Development or its designees to~~  
 25 ~~monitor the Department of Housing and Urban Development programs.~~

26 "(m) ~~When necessary or required by law, the department may~~

1 obtain inspection search warrants."

2 SECTION 13. Section 11, Texas Mobile Homes Standards Act, as  
3 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
4 to read as follows:

5 "Section 11. FEES. (a) There shall be a fee of \$15 for the  
6 inspection of the installation of mobile homes which shall be paid  
7 by the installer of the mobile home ~~[dealer or manufacturer who~~  
8 ~~sold the mobile home to the consumer]~~. Said fee shall be paid to  
9 the state~~l, This fee shall be paid within 30 days]~~ and shall  
10 accompany notification to the department of the exact location of  
11 the mobile home. The department shall make fee distributions to  
12 local governmental subdivisions performing inspections pursuant to  
13 contracts or other official designations.

14 "(b) Looking for guidance to the rules and regulations  
15 promulgated under Title VI of the Housing and Community Development  
16 Act of 1974 and to that Act itself, the commissioner shall set fees  
17 for the following functions:

18 "(1) There shall be a schedule of fees for the review of  
19 mobile home blueprints and supporting data when the department acts  
20 as a Design Approval Primary Inspection Agency. This fee shall be  
21 paid by the manufacturer seeking approval.

22 "(2) There shall be an inspection fee on all mobile homes  
23 manufactured or assembled within the State of Texas. This fee  
24 shall be paid by the manufacturer of the home. The manufacturer  
25 shall also be charged for the actual cost of travel for  
26 representatives of the department to and from the manufacturing

1 facility.

2       "(3) The fees in Subsections (1) and (2) shall not be  
3 applicable when an accepted inspection agency authorized by the  
4 Department of Housing and Urban Development, other than the  
5 department, acts as the Design Approval Primary Inspection Agency  
6 or the In-Plant Inspection Agency.

7       "(4) There shall be a fee for inspection of ~~[newer]~~ used  
8 mobile homes at retailer ~~[dealer]~~ locations to check compliance  
9 with the code and to determine if the mobile home has been damaged  
10 in transit. This fee shall be paid by the retailer ~~[dealer]~~ in  
11 possession of the mobile homes at the time the inspection was made.  
12 For any given mobile home at a retailer ~~[dealer]~~ location, this fee  
13 may not be assessed more than one time.

14       "(5) There shall be a fee charged on an hourly basis for  
15 inspection of alterations made upon the structure, plumbing,  
16 heating, or electrical systems of mobile homes. This fee shall be  
17 paid by the person ~~[dealer]~~ making the alteration. The person  
18 ~~[dealer]~~ shall also be charged for the actual cost of travel for  
19 representatives of the department to and from the place of  
20 inspection ~~[dealership making the alteration]~~.

21       "(6) There shall be a fee for the issuance of seals for used  
22 mobile homes which shall be paid by the retailer or broker  
23 ~~[dealer]~~.

24       "(c) The installer of a modular home shall pay to the state  
25 a fee set by the commissioner for the inspection of the  
26 installation of the modular home. Before installation the

1 installer shall notify the department of the exact location of the  
 2 modular home and shall pay the fee [Fees assessed under this Act  
 3 shall be paid to the State Treasury and placed in the General  
 4 Revenue Fund except as otherwise provided in Subsection (a) of this  
 5 section. In addition, the reimbursements for travel expenses  
 6 provided in Parts (2) and (4), Subsection (b) of this section, are  
 7 hereby reappropriated to the department for use in its mobile home  
 8 program].

9 "(d) Following a hearing pursuant to the Administrative  
 10 Procedure and Texas Register Act, as amended (Article 6252-13a,  
 11 Vernon's Texas Civil Statutes), the commissioner shall set fees for  
 12 the following functions:

13 "(1) a fee paid by the manufacturer for the review of  
 14 modular home designs, blueprints, and specifications;

15 "(2) an inspection fee paid by the manufacturer for all  
 16 modular homes manufactured in the state and for all modular homes  
 17 manufactured outside of the state to be transported to retailers or  
 18 consumers in the state;

19 "(3) a fee charged on an hourly basis and paid by the person  
 20 making the alteration for an inspection of the alterations made on  
 21 a modular home after construction and certification by the  
 22 manufacturer and before the closing of a sale to the consumer;

23 "(4) annual fees for the issuance and renewal of  
 24 manufacturers', retailers', brokers', and installers' certificates  
 25 of registration; and

26 "(5) a fee for the issuance of decals that shall be paid by

1 the manufacturer.

2 "(e) The person required to pay an inspection fee set in  
3 accordance with Subsection (d) of this section shall pay the cost  
4 of travel to and from the place of the inspection for  
5 representatives of the department who make the inspection.

6 "(f) All fees assessed under this Act shall be paid to the  
7 State Treasurer and placed in the General Revenue Fund.

8 "(g) The [existing] fees charged by the department in effect  
9 August 31, 1979, shall remain in effect [upon the effective date of  
10 this Act and] until the new schedule of fees set forth in  
11 [Subsection (b) of] this section has been promulgated and adopted."

12 SECTION 14. Section 13, Texas Mobile Homes Standards Act, as  
13 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
14 to read as follows:

15 "Section 13. SECURITY REQUIRED. (a) The department may not  
16 issue a certificate of registration, unless the applicant first  
17 files [As of the effective date of this Act, manufacturers,  
18 dealers, and salespersons are required to file either] a surety  
19 [performance] bond, a cash deposit, or other security in such form  
20 as the commissioner may prescribe and a written irrevocable  
21 designation of the commissioner as agent for service of legal  
22 process [along with such information as the commissioner may deem  
23 necessary to insure compliance with the intent of this Act].

24 "(b) If a surety [performance] bond is filed, it shall be  
25 continuous and remain in effect until cancelled by the surety  
26 company with notice as provided by this Act. A cash deposit or

1 other security need not be posted annually so long as the  
 2 applicable amount specified in ~~[Subsection (1) of]~~ this section  
 3 remains posted. If a claim is made against a cash deposit causing  
 4 the deposit to be lessened, the depositor has 20 calendar days in  
 5 which to deposit additional money or other security so that  
 6 compliance may be had with the requirements of ~~[Subsection (1) of]~~  
 7 this section. If the deficit is not eliminated within 20 days, ~~the~~  
 8 certificate of registration of the inadequately covered  
 9 manufacturer, retailer, broker, or installer is immediately  
 10 suspended. If a bond is cancelled, the certificate of registration  
 11 is immediately suspended [any subsequent contract between a  
 12 consumer and the inadequately covered dealer, manufacturer, or  
 13 salesperson is voidable at the option of the consumer].

14 ~~"[(c)] At the time a consumer enters into a contract, if a~~  
 15 ~~manufacturer, dealer, or salesperson has neither posted a cash~~  
 16 ~~deposit or other security, nor filed a performance bond, the~~  
 17 ~~contract between a consumer and that manufacturer, dealer, or~~  
 18 ~~salesperson is voidable at the option of the consumer.]~~

19 "[c] ~~[(d)]~~ If a cash deposit or other security is posted,  
 20 the interest from said deposit shall go to the depositor.

21 "[d] ~~[(e)]~~ The bond shall be a surety bond issued by a  
 22 company authorized to do business in this state and shall be in  
 23 conformity with the Insurance Code. The cash deposit or other  
 24 security shall be in such a form as the commissioner may deem  
 25 appropriate ~~[to insure compliance with the intent of this Act].~~

26 "[e] ~~[(f)]~~ The bond, cash deposit, or other security shall



be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment [~~establishes liability~~] against a manufacturer, retailer, broker, installer [~~dealer~~] or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, [~~or~~] lease-purchase, exchange, brokerage, or installation of a manufactured [~~mobile~~] home including but not limited to

"(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

"(2) failure to deliver proper title documents or certificates of title to consumers;

"(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission;  
or

"(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security shall not be liable for judgments resulting from tort claims, except as expressly set forth hereinabove, nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal or surety jointly and severally for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the

1 cash deposit or other security posted under this section be liable  
2 for an amount in excess of actual damages, restitution, or  
3 expenses, including reasonable attorney's fees. Any judgment  
4 obtained against a principal is conclusive against the surety or  
5 other security if notice of the filing of suit is given as required  
6 by this section. The bond or other security shall be open to  
7 successive claims up to the amount of face value of the bond or  
8 other required security. The surety shall not be liable for  
9 successive claims in excess of the bond amount, regardless of the  
10 number of years the bond remains in force.

11 "(f) [~~to~~] A consumer shall inform the manufacturer,  
12 retailer, installer, [~~dealer~~] or salesperson, and the department of  
13 any claim against the bond or security no later than two years  
14 after the purchase of the mobile home. Whenever the department  
15 receives notice of a claim against a bond, the department shall  
16 promptly notify the bonding company involved. If the consumer  
17 claim results in a private lawsuit being filed by the consumer, the  
18 consumer shall notify the attorney general's office and the surety  
19 company by certified mail of the filing of the lawsuit. At the  
20 time of sale or delivery of a manufactured [~~mobile~~] home to a  
21 consumer, the consumer must be given conspicuous written  
22 notification of this two-year limit and the notice requirements.

23 "(g) [~~to~~] Any manufacturer, retailer, broker, or installer  
24 [~~or dealer~~] who maintains a place of business at one or more  
25 locations shall file with the department a separate bond or other  
26 security for each location. A manufactured home installed on a

permanent foundation system and offered for sale as real estate is not a business location that requires a bond.

"(b)(4) A manufacturer shall be bonded, supply a cash deposit or other security in the amount of \$100,000. A retailer ~~[dealer]~~ shall be bonded, supply a cash deposit, or other security in the amount of \$25,000. A salesperson shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A broker shall be bonded, supply a cash deposit or other security in the amount of \$15,000. An installer shall be bonded, supply a cash deposit or other security in the amount of \$2,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer.

"(1)(4) The bonding company must provide written notification to the department at least 60 days prior to the cancellation of any bond required by this Act. Any cash deposit or other security on file with the department shall remain on file with the department two years after the person ~~[manufacturer or dealer]~~ ceases ~~[the]~~ business as a manufacturer, retailer, broker, or installer or salesperson or at ~~[of manufacturing or selling mobile homes or]~~ such time as the department may determine that no claims exist against the cash deposit or security.

~~"(k) Brokers shall be considered to be dealers. Brokers shall not be considered to be dealers if they possess a valid real estate broker or salesperson license as required by The Real Estate License Act (Article 6573(a), Vernon's Texas Civil Statutes). In~~

~~order for a licensed real estate broker or salesperson to qualify for this exemption he or she may only sell used mobile homes installed on and a part of the sale of real property.]"~~

SECTION 15. Section 14, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 14. WARRANTIES. (a) After the effective date of this Act, all new manufactured [~~mobile~~] homes sold [~~by a manufacturer or dealer~~] to consumers in the state shall be covered by the manufactured [~~mobile~~] home warranty set forth in this section [~~Act~~].

"(b) The manufactured [~~mobile~~] home warranty provided for in this Act is given by [~~shall apply to~~] the manufacturer of the manufactured [~~mobile~~] home [~~as well as to the dealer who sells the mobile home to the buyer, except as otherwise provided~~].

"(c) The manufactured [~~mobile~~] home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer [~~dealer~~] at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:

"(1) that the manufactured [~~mobile~~] home complies with the code;

"(2) that the warranty shall be in effect for a period of at least one year from date of sale or initial installation, whichever is later [~~set up~~];

"(3) that the manufactured [~~mobile~~] home and all appliances

1 and other equipment installed and included therein by the  
2 manufacturer or retailer [~~dealer~~] are free from defects in  
3 materials or workmanship;

4 "(4) that the manufactured home is installed in accordance  
5 with all standards, rules, regulations, administrative orders, and  
6 requirements of the department [~~that installation functions~~  
7 ~~performed on the mobile home are performed in compliance with this~~  
8 ~~act, and other applicable state requirements, provided that such~~  
9 ~~installation operations shall not be performed by any person other~~  
10 ~~than a dealer, manufacturer, or their duly authorized agents];~~

11 "(5) that the manufacturer or the retailer [~~dealer~~] or both  
12 shall take appropriate corrective action within a reasonable period  
13 of time in instances of defects in materials or workmanship, or  
14 failures to comply with the code;

15 "(6) [~~that the manufacturer and dealer shall be jointly and~~  
16 ~~severally liable to the consumer for the fulfillment of the terms~~  
17 ~~of the mobile home warranty, except as provided in Part (4),~~  
18 ~~Subsection (c) of this section, and that the consumer may notify~~  
19 ~~either one or both of the need for appropriate corrective action in~~  
20 ~~instances of defects of workmanship, or failures to comply with the~~  
21 ~~code;~~

22 "[~~47~~]" that the warranty contains the address of the  
23 retailer [~~dealer~~] and manufacturer where notices of defects may be  
24 given; and

25 "(7) that the purchaser shall notify either the manufacturer  
26 or the retailer or both in writing of the need for appropriate

1 corrective action in instances of defects in materials or  
2 workmanship or in failures to comply with the code.

3 "(d) The manufacturer and retailer are jointly and severally  
4 liable to the consumer for the fulfillment of the manufactured home  
5 warranty.

6 "(e) For all installations not covered by the warranty as  
7 set forth in Subsection (c) of this section, the installer shall  
8 give each manufactured home owner a written warranty that the  
9 installation of the home was done in accordance with all standards,  
10 requirements, rules, regulations, and administrative orders of the  
11 department."

12 SECTION 16. Section 17, Texas Mobile Homes Standards Act, as  
13 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
14 to read as follows:

15 "Section 17. PENALTIES. (a) A person, individual, or  
16 director, officer, or agent of a corporation who knowingly and  
17 willfully violates a provision of this Act or any rule, ~~(or)~~  
18 regulation, or administrative order of the department in a manner  
19 that threatens the health or safety of any purchaser or consumer  
20 commits a misdemeanor and on conviction shall be fined not more  
21 than \$1,000 or shall be confined in the county jail not longer than  
22 one year or both ~~[commits a Class A misdemeanor]~~.

23 "(b) Any person ~~[dealer, manufacturer, or salesperson]~~ who  
24 violates any provision of this Act or the rules and regulations of  
25 the department may be assessed a civil penalty to be paid to the  
26 State of Texas in an amount not to exceed \$1,000 for each such

violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation.

"(c) Whenever it appears that any person ~~[dealer, manufacturer, or salesperson]~~ has violated or is threatening to violate any of the provisions of this Act or of the rules, ~~[and]~~ regulations, and administrative orders of the department, either the attorney general or the department may cause a civil suit to be instituted either for injunctive relief to restrain the person ~~[such dealer, manufacturer, or salesperson]~~ from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both.

"(d) Failure by a manufacturer or retailer ~~[dealer]~~ to comply with the warranty provisions ~~[in Section 14]~~ of this Act or any implied warranties or the violation of any provision of this Act by any person ~~[the code provisions in Section 4 of this Act]~~ is ~~[considered]~~ a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of ~~[with]~~ the remedies in this Act."

SECTION 17. Section 18, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

1       "Section 18. MISCELLANEOUS PROVISIONS. (a) Any waiver by a  
2 consumer of the provisions of this Act is contrary to public policy  
3 and is unenforceable and void.

4       "(b) No provision of this Act shall exclude any other remedy  
5 available at law or equity to the consumer.

6       "(c) If any provision of this Act or the application thereof  
7 to any person or circumstances is held invalid, such invalidity  
8 shall not affect other provisions or applications of this Act which  
9 can be given effect without the invalid provision or application,  
10 and to this end the provisions of this Act are declared to be  
11 severable.

12       "(d) If a retailer, broker, or installer does not possess a  
13 valid certificate of registration at the time of entering into any  
14 contract with a consumer, the contract between the consumer and the  
15 retailer, broker, or installer is voidable at the option of the  
16 consumer.

17       "(e) Nothing in this Act shall be construed to modify or  
18 amend any provisions of The Real Estate License Act (Article 6573a,  
19 Vernon's Texas Civil Statutes).

20       "(f) Notwithstanding any provisions of any other statute,  
21 regulation, or ordinance to the contrary, an installer is not  
22 required to secure any permit, certificate, or license or pay any  
23 fee for the transportation of manufactured housing to the place  
24 where it is to be installed except as required by the department or  
25 the State Department of Highways and Public Transportation. The  
26 State Department of Highways and Public Transportation shall



1 cooperate with the department in the routing of the transportation  
2 of housing and shall not issue any permits for the transportation  
3 of manufactured housing except to persons holding valid  
4 certificates of registration issued by the department."

5 SECTION 18. Chapter 18, Code of Criminal Procedure, 1965, as  
6 amended, is amended by adding Article 18.051 to read as follows:

7 "Article 18.051. WARRANTS FOR REPRESENTATIVES OF THE TEXAS  
8 DEPARTMENT OF LABOR AND STANDARDS. (a) A search warrant may be  
9 issued to a representative of the Texas Department of Labor and  
10 Standards for the purpose of allowing inspection of any specified  
11 premises to determine the presence of a violation of the Texas  
12 Manufactured Housing Standards Act (Article 5221f, Vernon's Texas  
13 Civil Statutes) or the Texas Manufactured Housing Standards Code.

14 "(b) A magistrate may not issue a search warrant under this  
15 article unless there is a presentation of evidence of probable  
16 cause to believe that a violation is present in the premises sought  
17 to be inspected.

18 "(c) In determining probable cause, the magistrate is not  
19 limited to evidence of specific knowledge and may consider any of  
20 the following:

21 "(1) previous deviations, defects, or violations found  
22 present in the premises;

23 "(2) the type of premises;

24 "(3) the purpose for which the premises are used; and

25 "(4) the presence of code deviations or defects or  
26 violations in and the general condition of premises near the

1 premises sought to be inspected."

2       SECTION 19.   Sections 5, 10, and 15, Texas Mobile Homes  
3 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
4 Statutes), are repealed.

5       SECTION 20.   This Act takes effect September 1, 1979. The  
6 standards and requirements for the construction and installation of  
7 modular homes established by this Act are effective January 1,  
8 1980.

9       SECTION 21.   The importance of this legislation and the  
10 crowded condition of the calendars in both houses create an  
11 emergency and an imperative public necessity that the  
12 constitutional rule requiring bills to be read on three several  
13 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 636, Section 3, Subsection (q), page 6, line 23 by changing the period following the word "Act" to a semicolon and adding the following:

"; nor does it include building modules incorporating concrete or masonry as the primary structural component."

Robnett

COMMITTEE AMENDMENT NO. 2

Amend S.B. No. 636, Section 6, Paragraph (e), page 13, line 17 by deleting the word "licensed" and substituting therefor the word "registered".

Robnett

# COMMITTEE REPORT

The Honorable Bill Clayton  
Speaker of the House of Representatives

4/30/79  
(date)

Sir:

We, your COMMITTEE ON BUSINESS AND INDUSTRY, to whom was referred SB 636  
have had the same under consideration and beg to report back with the recommendation that it (measure)

- ~~( ) do pass, without amendment.~~  
~~(X) do pass, with amendment(s).~~  
~~( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.~~

A fiscal note was requested on APRIL 26, 1979 and is attached as part of this report.  
(date)

Author's fiscal statement attached.

The Committee recommends that this measure be placed on the ~~(Local)~~ Consent Calendar.

This measure ~~(X)~~ proposes new law.  
~~(X)~~ amends existing law.

House Sponsor of Senate Measure SEMOS

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Semos, Ch.	✓			
McLeod, V.C.	✓			
Polumbo, V.C.A.				✓
Allee				✓
Bush				✓
Glossbrenner				✓
Hill, Anita				✓
Lee	✓			
Robnett	✓			
Thompson, Senfronia	✓			
Waters	✓			

Total: 6 aye  
0 nay  
0 present, not voting  
5 absent

Chris Victor Senar  
CHAIRMAN  
Keymolds  
COMMITTEE COORDINATOR

## BILL ANALYSIS

### Background Information

Mobile homes are regulated by Article 5221f, V.T.C.S., and have been, in varying degrees, since 1969. In 1973 complete regulation of construction and installation standards began; in 1975 mandatory warranties and bonding requirements were added to the statute. Most of the changes in the present statute included in C.S.S.B. 636 relate to the fact that the federal government through H.U.D. has preempted the states (effective June 15, 1976) in the regulation of construction standards of mobile homes (but not installation) and to the fact that H.U.D. has not regulated modular homes.

Modular homes, because of their relatively lower price and ease of mobility, are experiencing unprecedented sales throughout the total housing market. Modular homes are complete houses constructed off-site in an assembly process similar to mobile homes but attached permanently to property. These housing units are usually sold at the same locations as mobile homes. However, present regulations regarding the manufacturing, selling, installing and servicing of mobile homes do not apply to these modular housing units. This absence allows for potentially deceitful practices and substandard homes to be sold by both Texas dealers and out of state dealers. In order to avoid this occurrence, this bill seeks to bring modular housing units into line with the present standards established for mobile homes.

### Purpose

Relates to the amending of the Texas Mobile Home Standards Act (Article 5221f, V.T.C.S.) by including the term modular homes into the Act. Amends Sections 1-3, 4, 6-9, 9b, 9h-9k, 11, 13, 14, 17 and 18 and repeals Sections 5, 10 and 15 of the existing Texas Mobile Home Standards Act. Also amends Chapter 18, Code of Criminal Procedures, 1965, (Article 18.051).

### Section by Section Analysis

Section 1: The short title has been changed to read "The Texas Manufactured Housing Standards Act".

Section 2: States that the purpose of the Act is to protect the citizens of Texas against substandard manufactured housing by expanding various regulatory powers to deal with this problem.

Section 3: The term "dealer" is changed to "retailer". Definitions for "modular home" and "manufactured housing" are added. The definition of a "broker" is changed to clarify the distinction between a "broker" and "retailer". "Installation" is broadened to include modulars and transportation to the homesite. Also defines or redefines "manufacturer", "consumer", "decal", "installlee", "alteration", "lease purchase", "code", "salesperson", and "registrant".

Section 4: Construction and installation standards are required to be set for modulars by the Department of Labor and Standards as well as for mobile homes. Compliance with the National Mobile Home Construction and Safety Standards Act is required. The department is authorized to cooperate with local political subdivisions, and to contract with local subdivisions to perform required installation inspections. Local subdivisions may not adopt different codes or standards without the approval of the department.

Section 5: Various regulations are set forth. Out-of-state manufacturers are required to comply with federal standards and H.U.D. regulations. Modular design and construction quality control are required. Retailers, brokers and salespersons are prohibited from selling manufactured housing which does not have affixed the required code certification. Manufacturers are required to sell only to licensed retailers. Any person is prohibited from selling a manufactured home unless it is habitable.

Section 6: Requires all manufactured housing manufacturers, retailers, brokers, and installers to register with the department and file information necessary for enforcement of the Act. Bonding or security requirements must be met before a person can be registered. Certificate of Registration, after due process, would be subject to revocation or suspension for certain enumerated offenses. Failure to register would be a violation of the Act.

Section 7: Used mobile homes are required to have an appropriate seal or label before a retailer or broker may sell the unit.

Section 8: The department is required to adopt rules and regulations to assure compliance with the Act and with the federal statute.

Section 9: The department is authorized to make inspections to determine compliance with the Act.

Section 10: The department is authorized to employ inspectors.

Section 11: Contracts with federal agencies, any state agencies, and local political subdivisions for inspections are authorized.

Section 12: The department may contract with H.U.D. for monitoring programs. The department may obtain search warrants.

Section 13: Current fee schedules relating to mobile homes are continued. Following hearings, the commissioner is authorized to set fees for regulation of modular homes and for registration. Fees shall be placed in the General Revenue Fund.

Section 14: Bonding or other security is required for manufactured housing manufacturers, retailers, brokers, salespersons, and installers. The obligation of the bond, or security for payment is clarified.

Section 15: The mandatory one year warranty (now on mobile homes) is extended to modular homes. The manufacturer and retailer are jointly and severally liable. Installation of all homes is required to be warranted to be in compliance with the standards.

Section 16: Penalties are set forth for violations of the Act to bring the penalty section in compliance with federal requirements.

Section 17: Miscellaneous provisions are set forth: consumers can not waive rights; Act excludes no other remedies; consumers can void contracts if persons not registered; repeals inconsistent laws, but does not affect Real Estate License Act; restricts certain highway movement.

Section 18: The Code of Criminal Procedure is amended to authorize warrants for department inspections.

Section 19: Section 5, 10 and 15 of the current Texas Mobile Homes Standards Act are, respectively, repealed.

Section 20: The effective date of this Act is set at September 1, 1979, with the modular code standards to become effective January 1, 1980.

Section 21. The emergency clause.

#### Rulemaking Authority

Sections 4(a), 4(b), and 8 authorize the Texas Department of Labor and Standards to promulgate standards and requirements for the manufacture, sale and installation of manufactured homes in Texas. The department is also authorized to promulgate rules and regulations in order to comply with all federal codes or mandates in relation to the manufacture, sale and installation of manufactured housing. This new authority supersedes the old authority as of the effective date of the Act.

Most of the statutory changes and thus changes in rules provided in this bill relate to the fact that the federal government through H.U.D. has preempted states as of June 15, 1976 in the regulation of construction standards of mobile homes, but not the installation, and to the fact that H.U.D. has not previously regulated modular homes.

It was determined that a reasonable estimate of the costs and economic impact to the public of the proposed rulemaking could not be made. However, the fiscal implications to the state of the rulemaking authority are considered in the development in the attached fiscal note.

#### Summary of Committee Action

Public notice was posted in accordance with Rule V, Section 14, Rules of Procedure of the House of Representatives and a public hearing was held on April 30, 1979.

On April 30, 1979 the full committee voted to report S.B. 636 to the House with amendments and the recommendation that it do pass and be placed on the Consent Calendar by a record vote of six ayes and no nays.

The Chair recognized Mr. Will Ehrle, 6937 IH 35 North, Austin, Texas to speak in favor of S.B. 636. The Chair recognized Mr. Dave Steele, 7305 Grapevine Highway, Fort Worth, Texas to speak in opposition to S.B. 636.

Amendment No. 1 modified the definition of modular home. Amendment No. 2 changed "licensed retailer" to "registered retailer."

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

April 27, 1979

Honorable Chris V. Semos, Chairman  
Committee on Business and Industry  
House of Representatives  
Austin, Texas

In Re: Senate Bill No. 636,  
as engrossed  
By: Doggett

Sir:

In response to your request pursuant to House Rule V, Section 28, this office finds the fiscal implications of Senate Bill No. 636, as engrossed (amending the Texas Mobile Homes Standards Act), to be as follows:

The bill, as engrossed, would make no appropriation but would constitute prior legislative authorization for an appropriative request.

The probable fiscal implication of implementing the provisions of the bill as engrossed, during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out of the General Revenue Fund</u>	<u>Probable Revenue Gain to the General Revenue Fund</u>	<u>Change in Number of State Employees from FY 1979</u>
1980	\$656,863	\$656,863	+ 30
1981	680,210	680,210	+ 30
1982	680,210	680,210	+ 30
1983	680,210	680,210	+ 30
1984	680,210	680,210	+ 30

Similar annual costs and revenue gains would continue as long as the provisions of the bill, as engrossed, are in effect.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted as engrossed, is anticipated.

  
Thomas M. Keel  
Director

Source: Texas Department of Labor and Standards;  
LBB Staff: TK, JH, KH, BL

COMMITTEE AMENDMENT NO. 1

By Robnett

Amend S. B. 636, Section 3, subsection (q), page 6, line 23 by changing the period following the word "Act" to a semicolon and adding the following:

"nor does it include building modules incorporating concrete or masonry as the primary structural component."

of (ee)  
5/23/79

**ADOPTED**

MAY 17 1979

*Betty Murray*  
Chief Clerk  
House of Representatives

House am. #1



COMMITTEE AMENDMENT NO.

2

By Robnett

Amend ~~S.B.~~ S.B. 636, Section 6, Paragraph (e), page 13, line 17 by  
deleting the word "Licensed" and substituting therefor the word "registered".

**ADOPTED**

MAY 17 1979

*Betty Murray*  
Chief Clerk  
House of Representatives

*House Am. # 2*

5-23-79

FLOOR AMENDMENT NO. 3

BY :

Semas

Amend Section 6 of S. B. 636 by striking Section 7(j) and inserting in lieu thereof the following:

2.2  
(j) While acting as an agent for a registrant, an employee is covered by the business entity's certificate of registration and is not required to be individually registered. An independent contractor or business entity may not operate under the certificate of registration of another business entity except as an agent or subcontractor of a registered installer who shall remain fully responsible for all installation functions performed by such agent as subcontractor.

**ADOPTED**

MAY 17 1979

*Betty Mussey*  
Chief Clerk  
House of Representatives

House Am. # 3

Floor Amendment No.

④

By

*Hansen*

Amend S.B. 636, 1st printing, Section 4(b) by striking "of minimum hurricane-force velocity" on page 8, line 22, and substituting the following:

"of hurricane-force velocity of not less than 105 miles per hour"

**ADOPTED**

MAY 17 1979

*Ortiz Mussey*  
Chief Clerk  
House of Representatives

*House am. # 4*

(cc)  
82 S-95

Floor Amendment

BY

Maloney

No. \_\_\_\_\_

5

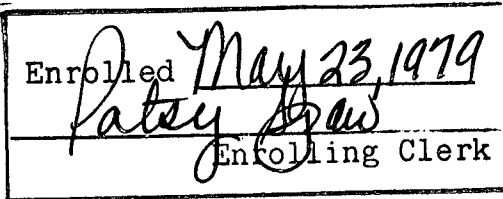
Amend S. B. 636 by striking and deleting all of Section 18  
and renumbering the remaining sections appropriately.

**ADOPTED**

**MAY 17 1979**

*Betty Murray*  
Chief Clerk  
House of Representatives

House am. #5



S.B. No. 636

1 AN ACT

2 amending and revising the Texas Mobile Home Standards Act, as  
3 amended (Article 5221f, Vernon's Texas Civil Statutes), to be known  
4 as the Texas Manufactured Housing Standards Act; providing for  
5 regulation of the construction, sale, transportation, and  
6 installation of manufactured housing and setting forth such  
7 regulation; and providing penalties.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

9 SECTION 1. Section 1, Texas Mobile Homes Standards Act, as  
10 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
11 to read as follows:

12 "Section 1. SHORT TITLE. This Act may be cited as the Texas  
13 Manufactured Housing [~~Mobile Homes~~] Standards Act."

14 SECTION 2. Section 2, Texas Mobile Homes Standards Act, as  
15 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
16 to read as follows:

17 "Section 2. PURPOSE. The legislature finds that there is a  
18 growing need to provide the citizens of the state with safe,  
19 affordable, and well-constructed housing. The legislature finds  
20 that manufactured housing has become a primary housing source of  
21 many of the state's citizens. It is the specific intent of the  
22 legislature to encourage the construction of housing for the  
23 state's citizens and to improve the general welfare and safety of  
24 purchasers of manufactured housing in this state. The legislature  
25 finds that existing statutes and regulations are not adequate to

1 provide for the full protection of the consumer and to prevent  
2 certain discriminations that exist in the state with regard to  
3 manufactured housing. The legislature finds that it is the  
4 responsibility of the state to provide for the protection of its  
5 citizens who desire to purchase housing by imposing certain  
6 regulations on the construction and installation, to provide  
7 economic stability of manufactured housing manufacturers,  
8 retailers, installers, and brokers, and to provide fair and  
9 effective consumer remedies ~~[it is the legislature's intent to~~  
10 ~~improve the general welfare and safety of the citizens of this~~  
11 ~~state. The legislature finds that mobile homes have become a~~  
12 ~~primary housing resource of many of the citizens of the state; that~~  
13 ~~a growing awareness exists that many consumers are injured by~~  
14 ~~unprincipled and dishonest members of the mobile home industry,~~  
15 ~~that current warranties are deficient, that existing means of~~  
16 ~~remedying these injustices are inadequate and do not provide a~~  
17 ~~viable means for protecting the consumer, and that it is the~~  
18 ~~responsibility of the state to provide for the protection of its~~  
19 ~~citizens through the imposition of certain regulations on the~~  
20 ~~mobile home industry].~~ In recognition of these findings, the  
21 legislature deems it necessary to expand various regulatory powers  
22 to deal with these problems. The legislature finds this to be the  
23 most economical and efficient means of dealing with this problem  
24 and serving the public interest. Accordingly, this Act shall be  
25 liberally construed and applied to promote its underlying policies  
26 and purposes."

SECTION 3. Section 3, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. DEFINITIONS. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

"(a) 'Mobile home' means a structure, transportable in one or more sections, which is eight body feet or more in width and is 32 body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

"(b) 'Retailer' [~~Dealer~~] means any person [~~other than a manufacturer~~] engaged in the business of buying for resale, selling, or exchanging manufactured [~~mobile~~] homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer [~~dealer~~] unless engaged in the sale, exchange, or lease-purchase of two [~~three~~] or more manufactured [~~mobile~~] homes to consumers in any consecutive 12-month period.

"(c) 'Manufacturer' means any person who constructs [~~manufactures~~] or assembles manufactured housing for sale, exchange, or lease-purchase within the state [~~mobile homes and sells them to dealers or consumers~~].

"(d) 'Department' means the Texas Department of Labor and Standards.

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1           "(e) 'Person' means an individual, partnership, company,  
2 corporation, association, or other group, however organized.

3           "(f) 'Broker' means a person engaged by others to negotiate  
4 or offer to negotiate bargains or contracts for the sale, exchange,  
5 or lease-purchase of their manufactured ~~[mobile]~~ homes at the site  
6 where installed to consumers. A broker may or may not be an agent  
7 of any party involved in the transaction. No person shall be  
8 considered a broker unless engaged in brokerage activities related  
9 to the sale, exchange, or lease-purchase of two ~~[three]~~ or more  
10 manufactured ~~[mobile]~~ homes to consumers in any consecutive  
11 12-month period.

12           "(g) 'Consumer' means any person who seeks or acquires by  
13 purchase, exchange, or lease-purchase a manufactured ~~[mobile]~~ home  
14 ~~[from a manufacturer, dealer, or broker]~~.

15           "(h) 'Decal' means a device or insignia issued by the  
16 department that is permanently affixed to each transportable  
17 section of each modular home to indicate compliance with the  
18 standards, rules, and regulations established by the department  
19 ~~['Salesperson' means any person who for any form of compensation~~  
20 ~~sells or lease-purchases or offers to sell or lease-purchase mobile~~  
21 ~~homes to consumers as an employee or agent of a dealer]~~.

22           "(i) 'Seal' means a device or insignia issued by the  
23 department to be affixed to used mobile homes to indicate  
24 compliance with the standards, rules, and regulations established  
25 by the department. The seal shall remain the property of the  
26 department.



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1           "(j) 'Label' means a device or insignia issued by the  
2 department to indicate compliance with the standards, rules, and  
3 regulations established by the Department of Housing and Urban  
4 Development, and is permanently affixed to each transportable  
5 section of each mobile home manufactured after June 15, 1976, for  
6 sale to a consumer.

7           "(k) 'Installation,' when used in reference to manufactured  
8 housing [~~mobile home and when required by this Act~~], means the  
9 transporting of manufactured homes to the place where they will be  
10 used by the consumer, the construction of the foundation system,  
11 whether temporary or permanent, and the placement of a manufactured  
12 home on the foundation system, and includes supporting, blocking,  
13 leveling, securing, anchoring, and proper connection of multiple or  
14 expandable units and minor adjustments.

15           "(l) 'Installer' means any person, including a retailer  
16 [~~mobile home dealer~~] or manufacturer, who performs installation  
17 functions on manufactured housing [~~mobile homes~~].

18           "(m) 'Alteration' means the replacement, addition, and  
19 modification, or removal of any equipment or ~~its~~ installation after  
20 sale by a manufacturer to a retailer [~~dealer~~] but prior to sale and  
21 installation by a retailer [~~dealer~~] to a purchaser which may affect  
22 the construction, fire safety, occupancy, plumbing, heat-producing  
23 or electrical system. It includes any modification made in the  
24 manufactured [~~mobile~~] home which may affect the compliance of the  
25 home with the standards, but it does not include the repair or  
26 replacement of a component or appliance requiring plug-in to an

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1 electrical receptacle where the replaced item is of the same  
2 configuration and rating as the one being replaced. It also does  
3 not include the addition of an appliance requiring 'plug-in' to an  
4 electrical receptacle, which appliance was not provided with the  
5 manufactured [~~mobile~~] home by the manufacturer, if the rating of  
6 the appliance does not exceed the rating of the receptacle to which  
7 it is connected.

8 "(n) 'Lease-purchase' means to enter into a lease contract  
9 with a provision conferring on the lessee an option to purchase the  
10 manufactured [~~mobile~~] home.

11 "(o) 'Commissioner' means the Commissioner of the Texas  
12 Department of Labor and Standards.

13 "(p) 'Code' means the Texas Manufactured Housing [~~Mobile~~  
14 ~~Homes~~] Standards Code.

15 "(q) 'Modular home' means a structure or building module  
16 that is manufactured at a location other than the location where it  
17 is installed and used as a residence by a consumer, transportable  
18 in one or more sections on a temporary chassis or other conveyance  
19 device, and designed to be used as a permanent dwelling when  
20 installed and placed upon a permanent foundation system. The term  
21 includes the plumbing, heating, air-conditioning, and electrical  
22 systems contained in the structure. The term does not include a  
23 mobile home as defined in this Act; nor does it include building  
24 modules incorporating concrete or masonry as the primary structural  
25 component.

26 "(r) 'Salesperson' means any person who for any form of

1 compensation sells or lease-purchases or offers to sell or  
2 lease-purchase manufactured housing to consumers as an employee or  
3 agent of a retailer or broker.

4 "(s) 'Manufactured housing' or 'manufactured home' means a  
5 mobile home or a modular home or both.

6 "(t) 'Registrant' means any person who has registered with  
7 the department and has been issued a certificate of registration as  
8 a manufactured housing manufacturer, retailer, broker, or  
9 installer."

10 SECTION 4. Section 4, Texas Mobile Homes Standards Act, as  
11 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
12 to read as follows:

13 "Section 4. MANUFACTURED HOUSING [MOBILE--HOMES] STANDARDS.  
14 (a) The department shall [may] adopt standards and requirements  
15 for the installation [of plumbing, heating, and electrical systems]  
16 and for the construction of manufactured housing, that [mobile  
17 homes as it determines] are reasonably necessary in order to  
18 protect the health, [and] safety, and welfare of the occupants and  
19 the public. The collection of these standards and requirements is  
20 the Texas Manufactured Housing Code.

21 "(1) [Said standards and requirements shall be reasonably  
22 consistent with the fundamental principles adopted or issued as  
23 ANSI Standard A119.1 and as amended from time to time by the  
24 American National Standards Institute (ANSI) applicable to mobile  
25 homes.

26 "[(2) It is unlawful for any person to sell or offer for

~~sale within this state any mobile home that does not meet the standards and requirements adopted by the department pursuant to this Act.~~

"[~~43~~] The requirements and [existing] standards for the plumbing, heating, air-conditioning, and electrical systems and construction of mobile homes in effect on September 1, 1979, [~~shall~~] remain in full force and effect [~~upon the effective date of this Act, and~~] until amended in accordance with the procedure set forth in this section.

"(2) The department shall adopt standards and requirements for the construction of mobile homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Mobile Home Construction and Safety Standards Act of 1974.

"(3) The department shall adopt standards and requirements for the construction of modular homes which shall not be less stringent than the standards and requirements for the construction of mobile homes.

"(b) The department shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of hurricane-force velocity of not less than 105 miles per hour and that manufactured housing in all other counties of the state is capable of withstanding winds of a

1 minimum gale-force velocity. ~~[The department may adopt such~~  
2 ~~minimum standards as it deems necessary for the installation of~~  
3 ~~mobile homes except those in the inventories of manufacturers and~~  
4 ~~dealers within this state so that such mobile homes shall withstand~~  
5 ~~winds of minimum hurricane force velocity within the first two~~  
6 ~~tiers of coastal counties within this state and which shall~~  
7 ~~withstand winds of minimum gale force velocity in all other~~  
8 ~~counties. Compliance with such installation standards shall be the~~  
9 ~~responsibility of the dealer or manufacturer (when the manufacturer~~  
10 ~~sells mobile homes directly to consumers).]~~

11       "(1) The requirements and standards for the installation of  
12 mobile homes as adopted by the department in existence on August  
13 31, 1979, remain in force until amended in accordance with the  
14 procedure set forth in this section ~~(counties and municipalities~~  
15 ~~may, with the approval of the department, adopt more stringent~~  
16 ~~standards when necessary for the public health and safety).~~

17       "(2) All manufactured housing must be installed in  
18 compliance with the standards, rules, regulations, or  
19 administrative orders of the department ~~[No mobile home purchased~~  
20 ~~or lease purchased after the effective date of this Act shall be~~  
21 ~~situated or located within 300 feet of any other mobile home,~~  
22 ~~residence or building, except those in the inventories of~~  
23 ~~manufacturers and dealers within this state, unless such mobile~~  
24 ~~home is installed in accordance with such minimum standards].~~

25       "(3) The department may cooperate with all units of local  
26 government within this state in the establishment of inspection

1 training programs and, when requested, may authorize local units of  
2 government to make and perform inspection and enforcement  
3 activities related to the installation of manufactured housing  
4 [mobile homes] pursuant to contracts or other official designations  
5 and the rules and regulations of the department.

6 "(c) A political subdivision of this state, without the  
7 express approval of the department following a hearing on the  
8 matter, may not adopt different standards from those promulgated by  
9 the department for the construction or installation of manufactured  
10 housing within the political subdivision.

11 "[d] Before [at least 30 days before] the adoption or  
12 promulgation of any standards or requirements authorized by this  
13 section, any change in or addition to the standards authorized in  
14 this section, or [for] the approval of different [more stringent]  
15 standards by any political subdivision [county or municipality],  
16 the department shall publish [in the Texas Register] a notice and  
17 conduct a public hearing in accordance with the Administrative  
18 Procedure and Texas Register Act, as amended (Article 6252-13a,  
19 Vernon's Texas Civil Statutes), not sooner than the 30th day  
20 following the publication of notice [hereinafter]

21 "[(1) a copy of the proposed changes and additions; and

22 "[(2) the time and place that the department will consider  
23 any objections to the proposed changes and additions.

24 "[(d) After giving the notice required by Subsection (c) of  
25 this section, the department shall afford interested persons an  
26 opportunity to participate in the standards adoption process

1 ~~through submission of written data, views, or arguments with or~~  
2 ~~without opportunity to present the same orally on any matter].~~

3 "(e) ~~[The adoption of requirements and standards shall~~  
4 ~~require the approval of and certification by the commissioner,~~

5 "[~~(f)~~] Every requirement or standard or modification,  
6 amendment, or repeal of a requirement or standard adopted by the  
7 department shall state the date it shall take effect.

8 "~~[(g)] Immediately after their promulgation, the department~~  
9 ~~shall publish in the Texas Register all requirements and standards~~  
10 ~~or amendments thereto,~~

11 "~~[(h)] The standards and requirements adopted or promulgated~~  
12 ~~by the department for the installation of plumbing, heating, and~~  
13 ~~electrical systems in mobile homes, for the body and frame design~~  
14 ~~and construction of mobile homes, and for the installation of~~  
15 ~~mobile homes shall be known as the Texas Mobile Homes Standards~~  
16 ~~Code.]"~~

17 SECTION 5. Section 6, Texas Mobile Homes Standards Act, as  
18 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
19 to read as follows:

20 "Section 6. REGULATIONS. (a) It is unlawful for any  
21 manufacturer to construct ~~[manufacture]~~ mobile homes in this state  
22 for sale or resale unless such manufacturer has supplied the  
23 department with proof of acceptance by a Design Approval Primary  
24 Inspection Agency authorized by the Department of Housing and Urban  
25 Development, has purchased the required labels, and has all mobile  
26 homes manufactured in this state inspected by an accepted In-Plant

1 Inspection Agency authorized by the Department of Housing and Urban  
2 Development. It is unlawful for a manufacturer to ship mobile  
3 homes into the state for sale or resale unless the manufacturer has  
4 complied with all requirements of the National Mobile Home  
5 Construction and Safety Standards Act of 1974 and all standards,  
6 rules, and regulations of the Department of Housing and Urban  
7 Development.

8       "(b) It is unlawful for any manufacturer to construct  
9 modular homes in the state or to ship modular homes into the state  
10 for sale or resale unless constructed to the code and unless the  
11 manufacturer has received approval by the department of the design  
12 and specifications for the construction of its modular homes and of  
13 its quality control program to assure compliance with the  
14 requirements and standards of the Texas Manufactured Housing  
15 Standards Code, has purchased the required decals, and has the  
16 modular homes inspected pursuant to the regulations of the  
17 department [~~No alteration shall be made on any mobile home to which~~  
18 ~~a label has been affixed prior to installation without the prior~~  
19 ~~written approval of the department or which is not in compliance~~  
20 ~~with the rules and regulations of the department~~].

21       "(c) Before the sale of a manufactured home to a consumer  
22 and before its installation, it is unlawful for any manufacturer,  
23 retailer, broker, or installer to make any alteration on a  
24 manufactured home to which a seal, label, or decal has been affixed  
25 or cause such an alteration to be made, unless prior written  
26 approval has been obtained from the department [~~Each manufacturer~~



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~~and dealer of mobile homes shall establish and maintain such records, make such reports, and provide such information as the commissioner may reasonably require to enable him to determine whether such manufacturer or dealer has acted or is acting in compliance with this Act, and shall, upon request of a person duly designated by the commissioner, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer or dealer has acted or is acting in compliance with this Act].~~

"(d) It is unlawful for any retailer, broker, or salesperson to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase any manufactured home to a person in the state for use as a residence or dwelling, unless the manufactured home has affixed to it the appropriate seal, label, or decal [~~manufacturer to sell any mobile home to a dealer in this state if said dealer has not complied with the bonding or security requirements of this Act].~~

"(e) It is unlawful for a manufacturer to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase a manufactured home to any person in the state other than a registered retailer.

"(f) A person may not sell, exchange, or lease-purchase any manufactured home to another person in the state for use as a dwelling or residence, unless the manufactured home is habitable."

SECTION 6. Section 7, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended

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1 to read as follows:

2 "Section 7. REGISTRATION. (a) A person may not construct  
3 or assemble a manufactured home in the state or ship a manufactured  
4 home into the state, unless the person is registered as a  
5 manufactured housing manufacturer by the department and possesses a  
6 valid manufacturer's certificate of registration.

7 "(b) A person may not sell, exchange, lease-purchase, or  
8 offer to sell, exchange, or lease-purchase two or more manufactured  
9 homes to consumers in the state in any consecutive 12-month period,  
10 unless the person possesses a valid manufactured housing retailer's  
11 certificate of registration.

12 "(c) A person may not offer to negotiate or negotiate for  
13 others a bargain or contract for the sale, exchange, or  
14 lease-purchase of two or more manufactured homes to consumers in  
15 the state in any 12-month period, unless the person possesses a  
16 valid manufactured housing broker's certificate of registration.

17 "(d) A person may not perform any installation functions on  
18 manufactured housing in the state, unless the person possesses a  
19 valid installer's certificate of registration.

20 "(e) Each applicant for a certificate of registration as a  
21 manufacturer, retailer, broker, or installer must file with the  
22 department an application for registration containing the following  
23 information:

24 "(1) the legal name, address, and telephone number of the  
25 applicant;

26 "(2) the trade name by which the applicant does business

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1 and, if incorporated, the name registered with the secretary of  
2 state and the address of the business; and

3 "(3) the dates on which the applicant became the owner and  
4 operator of the business.

5 "(f) Each application for a certificate of registration must  
6 be accompanied by proof of the security required by this Act and  
7 payment of the required fee for the issuance of the certificate.

8 "(g) All certificates of registration are valid for one year  
9 from the date of issue and are renewable annually on payment of the  
10 annual fee; provided, however, that the initial certificates of  
11 registration issued to registrants as of September 1, 1979, may be  
12 issued for periods of less than one year and the annual fee shall  
13 be prorated proportionally.

14 "(n) The department by rule may adopt a system under which  
15 the licenses issued under this article expire on various dates  
16 during the year. For the year in which the expiration date is  
17 changed, license fees payable on the date of issuance shall be  
18 prorated on a monthly basis so that each licensee shall pay only  
19 that portion of the license fee that is applicable to the number of  
20 months during which the license is valid. On renewal of the  
21 license on the new expiration date, the total license fee is  
22 payable.

23 "(i) If a change occurs in the information filed with the  
24 department under Subsection (e) of this section, the applicant  
25 shall file an amendment to his or her application that states the  
26 correct information.

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1        "(j) While acting as an agent for a registrant, an employee  
2        is covered by the business entity's certificate of registration and  
3        is not required to be individually registered. An independent  
4        contractor or business entity may not operate under the certificate  
5        of registration of another business entity except as an agent or  
6        subcontractor of a registered installer who shall remain fully  
7        responsible for all installation functions performed by such agent  
8        as subcontractor.

9        "(k) The commissioner, after notice and hearing, may revoke  
10       or suspend for a definite period of time and for a particular  
11       geographic area any certificate of registration issued under this  
12       Act if the commissioner finds that the registrant:

13       "(1) knowingly and willfully violated any provision of this  
14       Act or any rule or regulation made pursuant to this Act after  
15       receipt of actual notice of any failure to comply:

16       "(2) without lawful authorization retained or converted any  
17       money, property, or any other thing of value from consumers in the  
18       form of down payments, sales and use taxes, deposits, or insurance  
19       premiums:

20       "(3) failed to deliver proper title documents or  
21       certificates of title to consumers:

22       "(4) failed to give or breached any manufactured home  
23       warranty required by this Act or by the Federal Trade Commission:

24       "(5) engaged in any false, misleading, or deceptive acts or  
25       practices as the term is set forth in and as those acts are  
26       declared unlawful by the provisions of Chapter 17, Subchapter E,

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1 Business & Commerce Code; or

2 "(6) failed to furnish or file any reports required by the  
3 department for the administration and enforcement of this Act.

4 "(1) The commissioner shall conduct any hearing involving  
5 the revocation or suspension of a certificate of registration in  
6 accordance with the Administrative Procedure and Texas Register  
7 Act, as amended (Article 6252-13a, Vernon's Texas Civil  
8 Statutes). [DEALERS. It is unlawful for any dealer to sell or  
9 offer for sale to dealers or to the consumers of this state any  
10 mobile home manufactured after the adoption or promulgation of the  
11 code unless said mobile home complies with the code and bears a  
12 label.]"

13 SECTION 7. Section 8, Texas Mobile Homes Standards Act, as  
14 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
15 to read as follows:

16 "Section 8. USED MOBILE HOMES. A retailer or broker may not  
17 sell, exchange, or lease-purchase or negotiate for the sale,  
18 exchange, or lease-purchase of a used mobile home manufactured  
19 after December 12, 1969, unless an appropriate seal or label is  
20 affixed to it. If the used mobile home does not have a seal or  
21 label, the retailer or broker must apply to the department for a  
22 seal with an affidavit that the manufactured home is  
23 habitable. [SEAL OF APPROVAL. Any dealer who has acquired a used  
24 mobile home without a seal or label shall apply to the department  
25 for a seal. The application for a seal shall include an affidavit  
26 stating that the unit has been brought up to or meets code

1 ~~requirements in effect at the time the mobile home was~~  
2 ~~manufactured.]~~"

3 SECTION 8. Subsection (b), Section 9, Texas Mobile Homes  
4 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
5 Statutes), is amended to read as follows:

6 "(b) The department shall adopt rules and regulations,  
7 promulgate administrative orders, and take all action necessary to  
8 assure compliance with the intent and purpose of this Act to  
9 effectuate and to provide for uniform enforcement of all provisions  
10 of this Act and of the Texas Manufactured Housing Standards Code.  
11 The department shall make and enforce rules and regulations  
12 reasonably required to effectuate ~~[all provisions of this Act and]~~  
13 the notification and correction procedures provided in Section 615  
14 of the National Mobile Home Construction and Safety Standards Act  
15 of 1974."

16 SECTION 9. Subsection (h), Section 9, Texas Mobile Homes  
17 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
18 Statutes), is amended to read as follows:

19 "(h) The department through its authorized representatives  
20 is authorized to enter at reasonable times and without advance  
21 notice any factory, warehouse, ~~[or]~~ establishment, or location of a  
22 registrant to make any inspections that are reasonably required to  
23 determine whether a registrant is in compliance with this Act and  
24 the rules, regulations, and administrative orders promulgated under  
25 this Act ~~[in which mobile homes are manufactured, stored, or held~~  
26 ~~for sale]."~~

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1           SECTION 10. Subsection (j), Section 9, Texas Mobile Homes  
2 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
3 Statutes), is amended to read as follows:

4           "(j) The department may employ state inspectors to carry out  
5 the functions required of the department pursuant to this Act, to  
6 effectuate the provisions of this Act, and to enforce the rules,  
7 regulations, and administrative orders promulgated pursuant to this  
8 Act. The department may authorize state inspectors to travel  
9 inside or outside of the state to inspect manufacturing facilities  
10 in connection with the enforcement of this Act [~~The department may~~  
11 ~~establish and require such training programs in the concepts,~~  
12 ~~techniques, and inspection of mobile homes for the personnel of~~  
13 ~~local governments as the department considers necessary]."~~

14           SECTION 11. Subsection (k), Section 9, Texas Mobile Homes  
15 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
16 Statutes), is amended to read as follows:

17           "(k) The department may contract with any federal agency or  
18 any agency or political subdivision of any state for the  
19 performance of any inspections or inspection programs pursuant to  
20 this Act or the rules and regulations of the department to assure  
21 that manufactured homes sold or installed in the state comply with  
22 the Texas Manufactured Housing Standards Code [~~the department may,~~  
23 ~~at its discretion, accept in plant inspection reports by a~~  
24 ~~recognized body or agency having follow-up in plant inspection~~  
25 ~~service certifying that the mobile homes comply with the code]."~~

26           SECTION 12. Section 9, Texas Mobile Homes Standards Act, as

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1 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
2 by adding Subsections (l) and (m) to read as follows:

3 "(l) The department may enter into contracts with the  
4 Department of Housing and Urban Development or its designees to  
5 monitor the Department of Housing and Urban Development programs.

6 "(m) When necessary or required by law, the department may  
7 obtain inspection search warrants."

8 SECTION 13. Section 11, Texas Mobile Homes Standards Act, as  
9 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
10 to read as follows:

11 "Section 11. FEES. (a) There shall be a fee of \$15 for the  
12 inspection of the installation of mobile homes which shall be paid  
13 by the installer of the mobile home ~~(dealer or manufacturer who~~  
14 ~~sold the mobile home to the consumer]~~. Said fee shall be paid to  
15 the state~~[, This fee shall be paid within 30 days]~~ and shall  
16 accompany notification to the department of the exact location of  
17 the mobile home. The department shall make fee distributions to  
18 local governmental subdivisions performing inspections pursuant to  
19 contracts or other official designations.

20 "(b) Looking for guidance to the rules and regulations  
21 promulgated under Title VI of the Housing and Community Development  
22 Act of 1974 and to that Act itself, the commissioner shall set fees  
23 for the following functions:

24 "(1) There shall be a schedule of fees for the review of  
25 mobile home blueprints and supporting data when the department acts  
26 as a Design Approval Primary Inspection Agency. This fee shall be



paid by the manufacturer seeking approval.

"(2) There shall be an inspection fee on all mobile homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

"(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

"(4) There shall be a fee for inspection of ~~newer~~ used mobile homes at retailer ~~dealer~~ locations to check compliance with the code and to determine if the mobile home has been damaged in transit. This fee shall be paid by the retailer ~~dealer~~ in possession of the mobile homes at the time the inspection was made. For any given mobile home at a retailer ~~dealer~~ location, this fee may not be assessed more than one time.

"(5) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes. This fee shall be paid by the person ~~dealer~~ making the alteration. The person ~~dealer~~ shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection ~~dealership making the alteration~~.

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1       "(6) There shall be a fee for the issuance of seals for used  
2 mobile homes which shall be paid by the retailer or broker  
3 [dealer].

4       "(c) The installer of a modular home shall pay to the state  
5 a fee set by the commissioner for the inspection of the  
6 installation of the modular home. Before installation the  
7 installer shall notify the department of the exact location of the  
8 modular home and shall pay the fee [~~Fees assessed under this Act~~  
9 ~~shall be paid to the State Treasury and placed in the General~~  
10 ~~Revenue Fund except as otherwise provided in Subsection (a) of this~~  
11 ~~section. In addition, the reimbursements for travel expenses~~  
12 ~~provided in Parts (2) and (4), Subsection (b) of this section, are~~  
13 ~~hereby reappropriated to the department for use in its mobile home~~  
14 ~~program]~~.

15       "(d) Following a hearing pursuant to the Administrative  
16 Procedure and Texas Register Act, as amended (Article 6252-13a,  
17 Vernon's Texas Civil Statutes), the commissioner shall set fees for  
18 the following functions:

19       "(1) a fee paid by the manufacturer for the review of  
20 modular home designs, blueprints, and specifications:

21       "(2) an inspection fee paid by the manufacturer for all  
22 modular homes manufactured in the state and for all modular homes  
23 manufactured outside of the state to be transported to retailers or  
24 consumers in the state:

25       "(3) a fee charged on an hourly basis and paid by the person  
26 making the alteration for an inspection of the alterations made on

1 a modular home after construction and certification by the  
2 manufacturer and before the closing of a sale to the consumer;

3 "(4) annual fees for the issuance and renewal of  
4 manufacturers', retailers', brokers', and installers' certificates  
5 of registration; and

6 "(5) a fee for the issuance of decals that shall be paid by  
7 the manufacturer.

8 "(e) The person required to pay an inspection fee set in  
9 accordance with Subsection (d) of this section shall pay the cost  
10 of travel to and from the place of the inspection for  
11 representatives of the department who make the inspection.

12 "(f) All fees assessed under this Act shall be paid to the  
13 State Treasurer and placed in the General Revenue Fund.

14 "(g) The [existing] fees charged by the department in effect  
15 August 31, 1979, shall remain in effect [upon the effective date of  
16 this Act and] until the new schedule of fees set forth in  
17 [Subsection (b) of] this section has been promulgated and adopted."

18 SECTION 14. Section 13, Texas Mobile Homes Standards Act, as  
19 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
20 to read as follows:

21 "Section 13. SECURITY REQUIRED. (a) The department may not  
22 issue a certificate of registration, unless the applicant first  
23 files [As of the effective date of this Act, manufacturers,  
24 dealers, and salespersons are required to file either] a surety  
25 [performance] bond, a cash deposit, or other security in such form  
26 as the commissioner may prescribe and a written irrevocable

1 designation of the commissioner as agent for service of legal  
2 process ~~[along with such information as the commissioner may deem~~  
3 ~~necessary to insure compliance with the intent of this Act].~~

4       "(b) If a surety ~~[performance]~~ bond is filed, it shall be  
5 continuous and remain in effect until cancelled by the surety  
6 company with notice as provided by this Act. A cash deposit or  
7 other security need not be posted annually so long as the  
8 applicable amount specified in ~~[Subsection (1) of]~~ this section  
9 remains posted. If a claim is made against a cash deposit causing  
10 the deposit to be lessened, the depositor has 20 calendar days in  
11 which to deposit additional money or other security so that  
12 compliance may be had with the requirements of ~~[Subsection (1) of]~~  
13 this section. If the deficit is not eliminated within 20 days, ~~the~~  
14 certificate of registration of the inadequately covered  
15 manufacturer, retailer, broker, or installer is immediately  
16 suspended. If a bond is cancelled, the certificate of registration  
17 is immediately suspended ~~[any subsequent contract between a~~  
18 ~~consumer and the inadequately covered dealer, manufacturer, or~~  
19 ~~salesperson is voidable at the option of the consumer].~~

20       "~~(c) At the time a consumer enters into a contract, if a~~  
21 ~~manufacturer, dealer, or salesperson has neither posted a cash~~  
22 ~~deposit or other security, nor filed a performance bond, the~~  
23 ~~contract between a consumer and that manufacturer, dealer, or~~  
24 ~~salesperson is voidable at the option of the consumer.]~~

25       "(c) [(d)] If a cash deposit or other security is posted,  
26 the interest from said deposit shall go to the depositor.

"(d) [~~to~~] The bond shall be a surety bond issued by a company authorized to do business in this state and shall be in conformity with the Insurance Code. The cash deposit or other security shall be in such a form as the commissioner may deem appropriate [~~to insure compliance with the intent of this Act~~].

"(e) [~~to~~] The bond, cash deposit, or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment [~~establishes liability~~] against a manufacturer, retailer, broker, installer [~~dealer~~] or salesperson for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action connected with the sale, [or] lease-purchase, exchange, brokerage, or installation of a manufactured [~~mobile~~] home, including but not limited to

"(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

"(2) failure to deliver proper title documents or certificates of title to consumers;

"(3) failure to give or the breach of any manufactured home warranty required by this Act or by the Federal Trade Commission;  
or

"(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code. The bond or other security

1 shall not be liable for judgments resulting from tort claims,  
 2 except as expressly set forth hereinabove, nor for any punitive,  
 3 exemplary, or treble damages. A consumer, the state, or any  
 4 political subdivision thereof may recover against the principal or  
 5 surety jointly and severally for such damages, restitution, or  
 6 expenses; provided, however, that in no event shall a surety or the  
 7 cash deposit or other security posted under this section be liable  
 8 for an amount in excess of actual damages, restitution, or  
 9 expenses, including reasonable attorney's fees. Any judgment  
 10 obtained against a principal is conclusive against the surety or  
 11 other security if notice of the filing of suit is given as required  
 12 by this section. The bond or other security shall be open to  
 13 successive claims up to the amount of face value of the bond or  
 14 other required security. The surety shall not be liable for  
 15 successive claims in excess of the bond amount, regardless of the  
 16 number of years the bond remains in force.

17 "[f] ~~(f)~~ A consumer shall inform the manufacturer,  
 18 retailer, installer, [dealer] or salesperson, and the department of  
 19 any claim against the bond or security no later than two years  
 20 after the purchase of the mobile home. Whenever the department  
 21 receives notice of a claim against a bond, the department shall  
 22 promptly notify the bonding company involved. If the consumer  
 23 claim results in a private lawsuit being filed by the consumer, the  
 24 consumer shall notify the attorney general's office and the surety  
 25 company by certified mail of the filing of the lawsuit. At the  
 26 time of sale or delivery of a manufactured [mobile] home to a

1 consumer, the consumer must be given conspicuous written  
2 notification of this two-year limit and the notice requirements.

3 "(g)(4) Any manufacturer, retailer, broker, or installer  
4 [or dealer] who maintains a place of business at one or more  
5 locations shall file with the department a separate bond or other  
6 security for each location. A manufactured home installed on a  
7 permanent foundation system and offered for sale as real estate is  
8 not a business location that requires a bond.

9 "(h)(4) A manufacturer shall be bonded, supply a cash  
10 deposit or other security in the amount of \$100,000. A retailer  
11 [dealer] shall be bonded, supply a cash deposit, or other security  
12 in the amount of \$25,000. A salesperson shall be bonded, supply a  
13 cash deposit or other security in the amount of \$2,000. A broker  
14 shall be bonded, supply a cash deposit or other security in the  
15 amount of \$15,000. An installer shall be bonded, supply a cash  
16 deposit or other security in the amount of \$2,000. A retailer  
17 holding a valid certificate of registration shall not be required  
18 to be bonded or file any security to secure a certificate of  
19 registration as a broker or an installer.

20 "(i)(4) The bonding company must provide written  
21 notification to the department at least 60 days prior to the  
22 cancellation of any bond required by this Act. Any cash deposit or  
23 other security on file with the department shall remain on file  
24 with the department two years after the person [manufacturer or  
25 dealer] ceases [the] business as a manufacturer, retailer, broker,  
26 or installer or salesperson or at [of manufacturing or selling

~~mobile homes or~~ such time as the department may determine that no claims exist against the cash deposit or security.

~~"[(k) Brokers shall be considered to be dealers. Brokers shall not be considered to be dealers if they possess a valid real estate broker or salesperson license as required by The Real Estate License Act (Article 6573(a), Vernon's Texas Civil Statutes). In order for a licensed real estate broker or salesperson to qualify for this exemption he or she may only sell used mobile homes installed on and a part of the sale of real property.]"~~

SECTION 15. Section 14, Texas Mobile Homes Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 14. WARRANTIES. (a) After the effective date of this Act, all new manufactured [mobile] homes sold ~~[by a manufacturer or dealer]~~ to consumers in the state shall be covered by the manufactured [mobile] home warranty set forth in this section [Act].

"(b) The manufactured [mobile] home warranty provided for in this Act is given by ~~[shall apply to]~~ the manufacturer of the manufactured [mobile] home ~~[as well as to the dealer who sells the mobile home to the buyer, except as otherwise provided]~~.

"(c) The manufactured [mobile] home warranty shall be set forth in a separate written document; shall be delivered to the consumer by the retailer ~~[dealer]~~ at the time the contract of sale is signed; and shall contain, but is not limited to, the following terms:



1           "(1) that the manufactured [mobile] home complies with the  
2 code;

3           "(2) that the warranty shall be in effect for a period of at  
4 least one year from date of sale or initial installation, whichever  
5 is later [set-up];

6           "(3) that the manufactured [mobile] home and all appliances  
7 and other equipment installed and included therein by the  
8 manufacturer or retailer [dealer] are free from defects in  
9 materials or workmanship;

10           "(4) that the manufactured home is installed in accordance  
11 with all standards, rules, regulations, administrative orders, and  
12 requirements of the department [that installation functions  
13 performed on the mobile home are performed in compliance with this  
14 act, and other applicable state requirements, provided that such  
15 installation operations shall not be performed by any person other  
16 than a dealer, manufacturer, or their duly authorized agents];

17           "(5) that the manufacturer or the retailer [dealer] or both  
18 shall take appropriate corrective action within a reasonable period  
19 of time in instances of defects in materials or workmanship, or  
20 failures to comply with the code;

21           "(6) [that the manufacturer and dealer shall be jointly and  
22 severally liable to the consumer for the fulfillment of the terms  
23 of the mobile home warranty, except as provided in Part (4),  
24 Subsection (e) of this section, and that the consumer may notify  
25 either one or both of the need for appropriate corrective action in  
26 instances of defects of workmanship, or failures to comply with the

1     ~~code,~~

2             "~~(7)~~ that the warranty contains the address of the  
3     ~~retailer [dealer]~~ and manufacturer where notices of defects may be  
4     given; and

5             "(7) that the purchaser shall notify either the manufacturer  
6     or the retailer or both in writing of the need for appropriate  
7     corrective action in instances of defects in materials or  
8     workmanship or in failures to comply with the code.

9             "(d) The manufacturer and retailer are jointly and severally  
10    liable to the consumer for the fulfillment of the manufactured home  
11    warranty.

12            "(e) For all installations not covered by the warranty as  
13    set forth in Subsection (c) of this section, the installer shall  
14    give each manufactured home owner a written warranty that the  
15    installation of the home was done in accordance with all standards,  
16    requirements, rules, regulations, and administrative orders of the  
17    department."

18            SECTION 16. Section 17, Texas Mobile Homes Standards Act, as  
19    amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
20    to read as follows:

21            "Section 17. PENALTIES. (a) A person, individual, or  
22    director, officer, or agent of a corporation who knowingly and  
23    willfully violates a provision of this Act or any rule, ~~(or)~~  
24    regulation, or administrative order of the department in a manner  
25    that threatens the health or safety of any purchaser or consumer  
26    commits a misdemeanor and on conviction shall be fined not more

1 than \$1,000 or shall be confined in the county jail not longer than  
 2 one year or both [~~commits a Class A misdemeanor~~].

3       "(b) Any person [~~dealer, manufacturer, or salesperson~~] who  
 4 violates any provision of this Act or the rules and regulations of  
 5 the department may be assessed a civil penalty to be paid to the  
 6 State of Texas in an amount not to exceed \$1,000 for each such  
 7 violation as the court may deem proper, except that the maximum  
 8 civil penalty may not exceed \$1,000,000 for any related series of  
 9 violations occurring within one year from the date of the first  
 10 violation.

11       "(c) Whenever it appears that any person [~~dealer,~~  
 12 ~~manufacturer, or salesperson~~] has violated or is threatening to  
 13 violate any of the provisions of this Act or of the rules, [~~and~~  
 14 regulations, and administrative orders of the department, either  
 15 the attorney general or the department may cause a civil suit to be  
 16 instituted either for injunctive relief to restrain the person  
 17 [~~such dealer, manufacturer, or salesperson~~] from continuing the  
 18 violation or threat of violation or for the assessment and recovery  
 19 of the civil penalty or for both.

20       "(d) Failure by a manufacturer or retailer [~~dealer~~] to  
 21 comply with the warranty provisions [~~in Section 14~~] of this Act or  
 22 any implied warranties or the violation of any provision of this  
 23 Act by any person [~~the code provisions in Section 4 of this Act~~] is  
 24 [~~considered~~] a deceptive trade practice in addition to those  
 25 practices delineated in Chapter 17, Subchapter E, Business &  
 26 Commerce Code and is actionable pursuant to said subchapter. As

1 such, the venue provisions and all remedies available in said  
2 subchapter apply to and are cumulative of ~~[with]~~ the remedies in  
3 this Act."

4 SECTION 17. Section 18, Texas Mobile Homes Standards Act, as  
5 amended (Article 5221f, Vernon's Texas Civil Statutes), is amended  
6 to read as follows:

7 "Section 18. MISCELLANEOUS PROVISIONS. (a) Any waiver by a  
8 consumer of the provisions of this Act is contrary to public policy  
9 and is unenforceable and void.

10 "(b) No provision of this Act shall exclude any other remedy  
11 available at law or equity to the consumer.

12 "(c) If any provision of this Act or the application thereof  
13 to any person or circumstances is held invalid, such invalidity  
14 shall not affect other provisions or applications of this Act which  
15 can be given effect without the invalid provision or application,  
16 and to this end the provisions of this Act are declared to be  
17 severable.

18 "(d) If a retailer, broker, or installer does not possess a  
19 valid certificate of registration at the time of entering into any  
20 contract with a consumer, the contract between the consumer and the  
21 retailer, broker, or installer is voidable at the option of the  
22 consumer.

23 "(e) Nothing in this Act shall be construed to modify or  
24 amend any provisions of The Real Estate License Act (Article 6573a,  
25 Vernon's Texas Civil Statutes).

26 "(f) Notwithstanding any provisions of any other statute,

1 regulation, or ordinance to the contrary, an installer is not  
2 required to secure any permit, certificate, or license or pay any  
3 fee for the transportation of manufactured housing to the place  
4 where it is to be installed except as required by the department or  
5 the State Department of Highways and Public Transportation. The  
6 State Department of Highways and Public Transportation shall  
7 cooperate with the department in the routing of the transportation  
8 of housing and shall not issue any permits for the transportation  
9 of manufactured housing except to persons holding valid  
10 certificates of registration issued by the department."

11 SECTION 18. Sections 5, 10, and 15, Texas Mobile Homes  
12 Standards Act, as amended (Article 5221f, Vernon's Texas Civil  
13 Statutes), are repealed.

14 SECTION 19. This Act takes effect September 1, 1979. The  
15 standards and requirements for the construction and installation of  
16 modular homes established by this Act are effective January 1,  
17 1980.

18 SECTION 20. The importance of this legislation and the  
19 crowded condition of the calendars in both houses create an  
20 emergency and an imperative public necessity that the  
21 constitutional rule requiring bills to be read on three several  
22 days in each house be suspended, and this rule is hereby suspended.

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S.B. No. 636

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President of the Senate                      Speaker of the House  
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I hereby certify that S.B. No. 636 passed the Senate on April 19, 1979, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendments on May 23, 1979, by a viva-voce vote.

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Secretary of the Senate  
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I hereby certify that S.B. No. 636 passed the House, with amendments, on May 18, 1979, by the following vote: Yeas 122, Nays 6, one present not voting.

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Chief Clerk of the House  
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Approved:

-----  
Date  
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Governor  
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S.B. No. 634

By Degett

Act amending the Texas Mobile Homes Standards Act, Chapter 656, Acts of the 65th Legislature, Regular Session, 1969, as last amended by Chapter 139, Acts of the 65th Legislature, Regular Session, 1977 (Article 5221F, Vernon's Texas Civil Statutes); and declaring an emergency.

2-20-79 Filed with the Secretary of the Senate

FEB 22 1979 Read, referred to Committee on HUMAN RESOURCES

Reported favorably.

APR 11 1979 Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by unanimous consent.

APR 19 1979 laid before Senate years, \_\_\_\_\_ days.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ years, \_\_\_\_\_ days.

APR 19 1979 Read second time and { ordered engrossed.  
~~passed to third reading.~~

Caption ordered amended to conform to body of bill.

APR 19 1979 Senate and Constitutional 3-Day Rules suspended by vote of 31 years, 0 days to place bill on third reading and final passage.

APR 19 1979 Read third time and passed by { 30 years, 1 days.

OTHER ACTION:

Betty King  
Secretary of the Senate

Patsy Spaw  
ENGROSSING CLERK

April 19, 1979 Engrossed  
April 19, 1979 Sent to HOUSE

APR 19 1979 Received from the Senate

APR 20 1979 Read first time and referred to Committee on Business & Industry  
MAY 1 1979

APR 30 1979 Reported favorably amended, sent to Printer at 5:40pm

MAY 2 1979 Printed and Distributed 8:46am

MAY 2 1979 Sent to Committee on Calendars 8:57am

MAY 17 1979 Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of \_\_\_\_\_ years, \_\_\_\_\_ days

Present, not voting.

Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of \_\_\_\_\_ years \_\_\_\_\_ days \_\_\_\_\_ present not voting.

MAY 18 1979 Read third time (amended); finally passed (failed) by a (Non-Record Vote) Record Vote of 122 years 6 days  
1 present not voting.

MAY 18 1979 Caption ordered amended to conform to body of bill.

Returned to Senate.

Betty Murray  
Chief Clerk of the House

MAY 22 1979 RETURNED FROM HOUSE *with amendments*

MAY 23 1979 Senate concurred in the amendments by viva voce vote.